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Monday
November 23, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DENVER, CO

WHEN: December 15; at 9 a.m.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
RESERVATIONS: Call the Denver Federal Information Center, 303–564–6575

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–3 of November 5, 1987

Eligibility of Tonga To Receive and Make Purchases of Defense Articles and Services Under the Foreign Assistance Act and Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503 of the Foreign Assistance Act and Section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Government of Tonga will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress.

This finding shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, November 5, 1987.

[FR Doc. 87-27019
Filed 11-19-87; 3:29 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12615 of November 19, 1987

Performance of Commercial Activities

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to facilitate ongoing efforts to ensure that the Federal Government acquires needed goods and services in the most economical and efficient manner, it is hereby ordered as follows:

Section 1. The head of each Executive department and agency shall, to the extent permitted by law:

(a) Ensure that new Federal Government requirements for commercial activities are provided by private industry, except where statute or national security requires government performance or where private industry costs are unreasonable;

(b) Identify by April 29, 1988, in cooperation with the Director of the Office of Management and Budget all commercial activities currently performed by government. The department and agency heads are encouraged to consult with the President's Commission on Privatization in making such identification;

(c) Schedule, by June 30, 1988, all commercial activities identified pursuant to subsection (b) for study in accordance with the procedures of OMB Circular No. A-76, as revised, and the Supplement thereto, to determine whether they could be performed more economically by private industry;

(d) Meet the study goals for Fiscal Year 1988 set forth in "Management of the United States Government, Fiscal Year 1988"; and thereafter, beginning with Fiscal Year 1989, conduct annual studies of not less than 3 percent of the department or agency's total civilian population, until all identified potential commercial activities have been studied;

(e) Include in each annual budget proposal to the Office of Management and Budget estimates of expected yearly budget savings from the privatization of commercial activities projected to be accomplished following the completion of scheduled studies, unless an exception is authorized by the Director of the Office of Management and Budget. These estimates shall be based on analysis of savings under previous studies and estimated savings to be achieved from future conversions to contract. A department or agency proposal may reflect retention of expected first-year savings as negotiated with the Office of Management and Budget for use as incentive compensation to reward employees covered by the studies for their productivity efforts, or for use in other productivity enhancement projects;

(f) Develop and maintain an effective job placement program for government employees affected by privatization initiatives and cooperate fully in interagency placement efforts;

(g) Designate a senior-level official to coordinate the OMB Circular No. A-76 studies and other privatization efforts; and

(h) Report to the President on progress each quarter, through the Director of the Office of Management and Budget.

Sec. 2. The Director of the Office of Management and Budget shall, to the extent permitted by law:

(a) Issue guidance to departments and agencies to implement this Order. Such guidance shall be designed to ensure an equitable cost comparison of government-operated commercial activities with private industry performance of the same activities, and to improve the efficiency in the conduct of studies;

(b) Publish for public review (i) not later than 30 days after its completion, the inventory of commercial activities identified pursuant to section 1(b) and the activities scheduled for study by departments and agencies in Fiscal Year 1988 pursuant to section 1(c); and (ii) not later than 30 days before the start of each successive fiscal year, the list of activities to be reviewed during that year pursuant to section 1(d); and

(c) Establish a tracking system to monitor, on a quarterly basis, progress by departments and agencies in carrying out this Order.

Sec. 3. The Director of the Office of Personnel Management, in consultation with the heads of other Executive departments and agencies, shall review and revise, as necessary and to the extent permitted by law, personnel policies and regulations in order (a) to ensure that government managers have the flexibility to organize in the most effective and efficient manner to achieve levels of productivity comparable with those of private industry, and (b) to reduce any adverse effects of productivity improvements on employees.

Sec. 4. For purposes of this Order, the terms "commercial activity," "conversion to contract," and "cost comparison" shall have the meanings set forth in OMB Circular No. A–76, as revised.

Sec. 5. Nothing in this Order shall be construed to confer a private right of action on any person, or to add in any way to applicable procurement procedures required by existing law.

Ronald Reagan

THE WHITE HOUSE,
November 19, 1987.

[FR Doc. 87–27039
Filed 11–19–87; 4:28 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 5745 of November 19, 1987

American Indian Week, 1987

By the President of the United States of America

A Proclamation

We do well to set aside the week in which Thanksgiving falls to honor the achievements of American Indians, the first inhabitants of the lands that now constitute the continental United States. Native Americans' assistance made a significant difference for early settlers. Since then, American Indians have continued to make valuable contributions to our country. They have served with valor and distinction in wartime, and their artistic, entrepreneurial, and other skills have truly enriched our national heritage.

The Constitution affirmed the special relationship of the Federal government with American Indians when it stipulated, "the Congress shall have Power To . . . regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . . ." This unique government-to-government relationship continues today and has been reinforced through treaties, laws, and court decisions. During the Bicentennial of the Constitution, it is especially fitting that we recognize and celebrate the many contributions of American Indians.

The Congress, by Senate Joint Resolution 53, has designated the period beginning November 22, 1987, and ending November 28, 1987, as "American Indian Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period beginning November 22, 1987, and ending November 28, 1987, as American Indian Week, and I request all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-27074
Filed 11-20-87; 10:20 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5746 of November 19, 1987

National Adoption Week, 1987

By the President of the United States of America

A Proclamation

Theodore Roosevelt captured a vital truth years ago when he said, "We cannot as a Nation get along at all if we haven't the right kind of home life." "The right kind of home life" is exactly what adoption is all about; during National Adoption Week we do well to remember that and to encourage this loving, proud, and beautiful way to create or enlarge families.

The family is something all of us need. Wholesome family life is not only the basis for stable communities and a strong country but also the best way ever devised to nurture, raise, and love children and to instill in them confidence, compassion, and understanding of right and wrong. Family life is a precious gift, and it is something adoption affords both children and parents in a truly special way.

In recent years many Americans have been discovering adoption and all its blessings, but for many it remains an untapped opportunity. Thanks to the efforts of devoted citizens, though, much progress has taken place in finding permanent homes for thousands of children, including some of the more than 30,000 youngsters with special needs across our country who await adoptive families. These children are older, or have emotional, physical, or mental disabilities, or are of minority heritage, or are sibling groups who cannot be separated. These wonderful children have a great deal of love to offer their adoptive families.

What is required of people considering adoption is the ability to love and the desire to help children. Adoption of children by their relatives or their step-parents has always been common, but in recent years we have begun to see the benefits of adoption by single, foster, and handicapped parents, as well as by parents with biological children. Members of the military have also shown great interest in adoption.

Many single women have realized that adoption is the best solution to crisis pregnancy. Often under the most difficult circumstances, they have rejected abortion and given their babies the gifts of life and of a loving adoptive home. Many dedicated Americans help these expectant mothers during and after pregnancy, but all of us, as individuals and as a Nation, need to do much more to support and encourage the brave women who heroically choose life.

During National Adoption Week and throughout the year we should do all we can to make adoption a true national concern. There is much that each of us can do to foster awareness of adoption—in schools, churches, businesses, communities, and government. The new report by the Interagency Task Force on Adoption will help us find innovative ways to encourage adoption and eliminate barriers to it, and that is good news for everyone.

The Congress, by Senate Joint Resolution 97, has designated the week of November 22 through November 28, 1987, as "National Adoption Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 22 through November 28, 1987, as National Adoption Week. I call upon all Americans to observe this week with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of November, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-27075
Filed 11-20-87; 10:21 am]
Billing code 3195-01-M

Editorial note: For the text of a memorandum from the President to the heads of executive departments and agencies, dated Nov. 13, on adoption, see the *Weekly Compilation of Presidential Documents* (vol. 23, p. 1325).

Rules and Regulations

Federal Register
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 375, and 382

[Docket Nos. RM87-3-019, and RM87-3-020]

Annual Charges Under the Omnibus Budget Reconciliation Act of 1986

Issued November 16, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rules; order granting rehearing solely for the purpose of further consideration.

SUMMARY: On September 16, 1987, the Federal Energy Regulatory Commission (Commission) issued an order on rehearing, amending its regulations concerning annual charges established pursuant to section 3401 of the Omnibus Budget Reconciliation Act of 1986. Several entities have filed petitions for rehearing of that order on rehearing. In this order, the Commission grants rehearing of its September 16 decision solely for the purpose of giving further consideration to the petitions for rehearing.

EFFECTIVE DATE: November 16, 1987.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Office of the General Counsel, Producer Regulation Division, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8308.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On October 16, 1987, ANR Pipeline Company and Colorado Interstate Gas Company sought rehearing or clarification of the Commission's September 16, 1987, rehearing order in Docket Nos. RM87-3-002 through 018. On the same date, Central Illinois Public Service Company sought clarification of the same order. In order to afford additional time for consideration of the issues raised in these petitions, the Commission grants rehearing of the September 16, 1987, order for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of a petition on its merits, either in whole or part. As provided in § 385.713 of the Commission's Rules of Practice, 18 CFR 385.713, no answers to this petition will be entertained by the Commission because this order does not grant rehearing on any substantive issue.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26933 Filed 11-20-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 87N-0313]

Antibiotic Drugs; Ceftriaxone Sodium Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of ceftriaxone sodium, ceftriaxone sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 23, 1987; comments, notice of participation, and request for hearing by December 23, 1987; data, information, and analyses to justify a hearing by January 22, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of ceftriaxone sodium, ceftriaxone sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug and adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Part 442 by adding new § 442.55, by redesignating § 442.255 as § 442.255a, and by adding new §§ 442.255 and 442.255b to provide for the inclusion of accepted standards for the product.

Enviromental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective November 23, 1987. However, interested persons may, on or before December 23, 1987, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch

between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 23, 1987, a written notice of participation and request for hearing, and (2) on or before January 22, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes this action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grants or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Part 442 is amended by adding new § 442.55, by redesignating § 442.255 as § 442.255a, and by adding new §§ 442.255 and 442.255b, to read as follows:

§ 442.55 Ceftriaxone sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftriaxone sodium is the 5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid, 7-[[(2-amino-4-thiazolyl)(methoxyimino)acetyl]amino]-8-oxo-3-[[(1,2,5,6-tetrahydro-2-methyl-5,6-dioxo-1,2,4-triazin-3-yl)thio]methyl]-,disodium salt, [6*R*-[6*alpha*, 7*beta*(*Z*)]]-. It is so purified and dried that:

(i) Its ceftriaxone potency is not less than 795 micrograms of ceftriaxone per milligram on an anhydrous free acid basis.

(ii) Its moisture content is not less than 8 percent and not more than 11 percent.

(iii) The pH of an aqueous solution containing the equivalent of 100.0 milligrams per milliliter is not less than 6.0 and not more than 8.0.

(iv) It is crystalline.

(v) It gives a positive identity test for ceftriaxone.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for ceftriaxone potency, moisture, pH, crystallinity, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Ceftriaxone potency.* Proceed as directed in § 442.55a(b)(1) of this chapter, except prepare the sample solution and calculate the micrograms of ceftriaxone free acid per milligram as follows:

(i) *Preparation of sample solution.* Dissolve an accurately weighed portion of the sample with sufficient water to obtain a concentration of 180 micrograms of ceftriaxone activity per milliliter. Prepare the sample solution just prior to its introduction into the chromatograph.

(ii) *Calculation.* Calculate the micrograms of ceftriaxone anhydrous free acid per milligram as follows:

$$\text{Micrograms of ceftriaxone anhydrous free acid per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

Where:

A_u = Area of the ceftriaxone peak in the chromatogam of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftriaxone peak in the chromatogram of the ceftriaxone working standard;

P_s = Ceftriaxone activity in the ceftriaxone working standard solution in micrograms of anhydrous free acid per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams per milliliter.

(4) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(5) *Identity.* Proceed as directed in § 436.211 of this chapter, using a potassium bromide disc containing 1.3 milligrams of ceftriaxone sodium in 300 milligrams of potassium bromide, prepared as described in paragraph (b)(1) of that section.

§ 442.255 Ceftriaxone injectable dosage forms.

§ 442.255a [Redesignated from § 442.255]

§ 442.255b Ceftriaxone sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftriaxone sodium injection is a frozen aqueous iso-osmotic solution of ceftriaxone sodium which may contain one or more suitable and harmless buffer substances. Each milliliter contains ceftriaxone sodium equivalent to 10, 20, or 40 milligrams of ceftriaxone per milliliter. Its ceftriaxone content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of ceftriaxone that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 6.0 and not more than 8.0. It passes the identity test. The ceftriaxone sodium used conforms to the standards prescribed by § 442.55(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The ceftriaxone sodium used in making the batch for potency, moisture, pH, crystallinity, and identity.

(B) The batch for content, sterility, pyrogens, pH, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(A) The ceftriaxone sodium used in making the batch: 10 packages, each containing 500 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Ceftriaxone content.* Proceed as directed in § 442.55a(b)(1) of this chapter, except prepare the sample solution and calculate the ceftriaxone content as follows:

(i) *Preparation of sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container immediately after thawing and reaching room temperature and dilute with mobile phase to obtain a solution containing 180 micrograms of ceftriaxone per milliliter (estimated). Prepare the sample solution just prior to its introduction into the chromatograph.

(ii) *Calculation.* Calculate the milligrams of ceftriaxone anhydrous free acid per milliliter of sample as follows:

$$\text{Milligrams of ceftriaxone anhydrous free acid per milliliter} = \frac{A_u X P_s X d}{A_s X 1{,}000}$$

where:

A_u = Area of the ceftriaxone peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftriaxone peak in the chromatogram of the ceftriaxone working standard;

P_s = Ceftriaxone activity in the ceftriaxone working standard solution in micrograms of anhydrous free acid per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 40 milligrams of ceftriaxone per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identify.* The high-performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the ceftriaxone working standard.

Dated: November 10, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 87-26924 Filed 11-20-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203, 221, 234, 251, and 575

[Docket No. N-87-1756]

Refinancing of FHA Insured Single Family Mortgages, Multifamily Leasehold Projects, and Emergency Shelter Grants Program; Announcement of Effective Dates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner and Office of the Assistant Secretary for Community Planning and Development.

ACTION: Notice of announcement of effective dates for certain recent final rules.

SUMMARY: Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), requires HUD to wait until the first period of 30 calendar days of continuous session of Congress occurring after the rules' publication. This notice announces the effective date for certain recently published final rules. Accordingly, HUD stated that it would publish a notice of the effective date of the final rules following expiration of the 30-session-day waiting period. HUD also stated that whether or not the statutory waiting period had expired, the rules would not become effective until a separate notice was published in the **Federal Register** announcing the effective date. For an explanation of subject matter on the rules, see **"SUPPLEMENTARY INFORMATION".**

EFFECTIVE DATES: For effective dates see **"SUPPLEMENTARY INFORMATION".**

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 7th Street SW., Washington, DC 20410, telephone no. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The effective date provision of the published rules stated that the rules would become effective following expiration of the first period of the 30-session-day waiting period. Thirty calendar days of continuous session of Congress have or will have expired on the respective dates listed below.

Accordingly, the purpose of this notice is to announce the effective dates for the rules listed below:

24 CFR Parts 203 and 234: Refinancing of FHA Insured Single Family Mortgages, Final Rule published October 6, 1987 (52 FR 37286); Docket No. R-87-1296; FR-2197. Effective Date: November 6, 1987.

24 CFR Parts 221, 234 and 251: Multifamily Leasehold Projects; Minimum Lease Term Eligibility, Final Rule published October 6, 1987 (52 FR 37288); Docket No. R-87-1339; FR-2222. Effective Date: November 6, 1987.

24 CFR Part 575: Emergency Shelter Grants Program, Final Rule published October 19, 1987 (52 FR 38864): Docket No. R-87-1316; FR-2298. Effective Date: December 2, 1987.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 18, 1987.

Donald A. Franck,

Acting, Assistant General Counsel for Regulations.

[FR Doc. 87-26944 Filed 11-20-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[T.D. 8163]

Imposition of Backup Withholding Due to Notification of an Incorrect Taxpayer Identification Number and the Due Diligence Exception to the Imposition of a Penalty for a Missing or an Incorrect Taxpayer Identification Number

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations that relate to backup withholding on any reportable payment when the Internal Revenue Service notifies the payor or broker to backup withhold due to an incorrect taxpayer identification number. Changes to the applicable tax law were made by the Interest and Dividend Tax Compliance Act of 1983 and the Tax Reform Act of 1986. These regulations affect payors, brokers, and payees of certain reportable payments and provide them with the guidance necessary to comply with the law. These regulations explain when a payor of

such reportable payments must backup withhold due to notification of an incorrect taxpayer identification number, provide a definition of an incorrect taxpayer identification number, and explain how a payee may correct his taxpayer identification number to avoid the imposition of backup withholding due to an incorrect taxpayer identification number.

This document also provides additional guidance to payors of reportable interest or dividend payments with respect to the due diligence exception to the imposition of a penalty for failing to furnish a taxpayer identification number or for furnishing an incorrect taxpayer identification number on an information return filed with the Internal Revenue Service.

DATES: The regulations apply generally to reportable payments made after December 31, 1983, and information returns filed after December 31, 1984. However, the requirements of § 35a.3406–1 as added by these regulations are not effective until January 1, 1988. Thus, a payor is only required to notify payees and backup withhold on payee accounts as required by these regulations if the payor receives a notice of an incorrect taxpayer identification number from the Internal Revenue Service on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Renay France of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3829, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the requirement that a payor or broker backup withhold 20 percent from any reportable payment under section 3406(a)(1)(B) of the Internal Revenue Code of 1986. This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369, 371). This document also contains temporary regulations relating to due diligence requirements under section 6676 (b) of the Code as amended by section 105 of the Act (Pub. L. 98–67, 97 Stat. 369, 380).

On October 4, 1983, the **Federal Register** published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR Part 35a) under sections 3406 and 6676 (b) of the Internal Revenue Code of 1954 (26 CFR Part 35a.9999–1; T.D. 7916, 48 FR 45362, as amended on November 25, 1983, by T.D. 7922, 48 FR 53111). Additional temporary regulations were published in the **Federal Register** on November 25, 1983 (26 CFR Part 35a.9999–2; T.D. 7922, 48 FR 53106, as amended on December 20, 1983, by T.D. 7929, 48 FR 56342, and on March 13, 1984, by T.D. 7922, 49 FR 9417), on December 20, 1983 (26 CFR Part 35a.9999–3; T.D. 7929, 48 FR 56330, as amended on January 3, 1984, by T.D. 7933, 49 FR 63, and on August 22, 1984, by T.D. 7966, 49 FR 33236), on February 28, 1984 (26 CFR Part 35a.9999–3A; T.D. 7946, 49 FR 7227), on August 22, 1984 (26 CFR Part 35a.9999–4T, T.D. 7966, 49 FR 33237, as amended on August 29, 1984, by T.D. 7972, 49 FR 34340; and 26 CFR Part 35a.9999–5; T.D. 7967, 49 FR 33240, as amended on September 19, 1984, by T.D. 7973, 49 FR 36645, on August 20, 1985, by T.D. 8046, 50 FR 33526, on April 3, 1986, by T.D. 8046, 51 FR 11447, on December 19, 1986, by T.D. 8110, 51 FR 45453), and on April 23, 1987 (26 CFR Part 35a.3406–2; T.D. 8137, 51 FR 13430). Those regulations were published primarily to provide guidance under the Interest and Dividend Tax Compliance Act of 1983.

Under this document § 35a.3406–1 is no longer reserved and is added to 26 CFR Part 35a, Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983. Section 35a.3406–1 will contain the temporary regulations in this document, issued under section 3406 (a)(1)(B), and will remain in effect until superseded by final regulations on this subject.

This document also adds additional questions and answers to § 35a.9999–1 and § 35a.9999–3 concerning the due diligence requirements under section 6676(b) which were published in the **Federal Register** on October 4, 1983 (26 CFR Part 35a.9999–1; T.D. 7916, 48 FR 45362) and on December 20, 1983 (26 CFR Part 35a.9999–3; T.D. 7929, 48 FR 56330). These questions and answers also will remain in effect until superseded by final regulations on this subject.

These temporary regulations are necessary to provide immediate guidance to payors, brokers, and payees when there is notification of an incorrect taxpayer identification number. The Internal Revenue Service intends to publish a notice of proposed rulemaking in the **Federal Register** in the near future that will provide comprehensive rules regarding backup withholding. Generally, the pertinent provisions of all the temporary regulations with respect to backup withholding will be incorporated in the notice of proposed rulemaking. The notice of proposed rulemaking will provided the public an opportunity to comment on the regulations.

Explanation of Provisions

The temporary regulations provide guidance concerning the backup withholding process when the payee furnishes a taxpayer idenfification number (hereafter, "TIN") to the payor, and the payor is subsequently notified by the Internal Revenue Service or by a broker that the number is incorrect. In general, payments subject to backup withholding due to an incorrect TIN are payments required to be shown on information returns under section 6049(a) (relating to returns regarding payments of interest), 6042(a) (relating to returns regarding payments of interest), 6042(a) (relating to returns regarding payments of dividends and corporate earnings and profits), 6041 (relating to information at source), section 6041A(a) (relating to returns regarding payments of remuneration for services and direct sales), section 6044 (relating to returns regarding payments of patronage dividends), section 6045 (relating to returns of brokers), section 6050A (relating to reporting requirements of certain fishing boat operators), and 6050N (relating to returns regarding payments of royalties), hereinafter "reportable payments." Some reportable payments described in the preceding sentence are not subject to backup withholding under section 3406(a)(1)(B) under certain circumtances are described in the regulations in this document.

Definition of an Incorrect TIN

A payee will be subject to backup withholding under section 3406(a)(1)(B) if the Service or a broker notifies a payor that the TIN furnished by the payee is incorrect. The Service will determine that a payee provided an incorrect TIN if either the name or number provided on an information return filed with respect to the payee does not match the name and associated number on the records of the Social Security Administration or the Service at the time the Internal Revenue Service determines if the number is correct.

Notice to Payors and Brokers Regarding Backup Withholding

The Service will notify payors and brokers that the payee is subject to backup withholding due to an incorrect taxpayer identification number. The form of the notice that the Service will send to a payor or broker is set forth in the Appendix to these temporary regulations. If a payor receives

notification from the Service or a broker that a payee provided an incorrect TIN and if at the time of such notice that incorrect TIN is reflected on a payee's account with the payor or will be used by the payor on information returns filed with the Service with respect to the payee, the payor must send a copy of the notice or a substitute notice to the payee within 5 business days after the date the payor receives the notice from the Service or a broker. The notice generally will inform the payee that the payor has been notified that the TIN furnished by the payee is incorrect and will advise the payee that backup withholding may apply to reportable payments made to him unless he provides his current surname and TIN under penalties of injury to the payor within 30 business days.

The payor must also include with this notice a reply envelope (self-addressed) which may, but is not required to, be postage prepaid, and a Form W–9 or acceptable substitute form on which the payee may certify, under penalties of perjury, that he is furnishing his correct TIN to the payor.

A broker who receives notice from the Service that a payee is subject to backup withholding under section 3406(a)(1)(B) and through whom the payee subsequently acquires a readily tradable instrument as defined in section 3406(h)(6) with respect to which the broker is not the payor is required to notify the payor of that instrument that the payee is subject to backup withholding under section 3406(a)(1)(B). The broker is required to give this information to the payor in connection with the transfer instructions for the acquisition. See A–41 of § 35a.9999–1 for the time and manner in which the broker is required to provide this information to the payor. Upon receiving the notice from a broker, a payor is required to notify the payee and to begin backup withholding under the same rules that apply to payors who receive a notice from the Service to begin backup withholding under section 3406(a)(1)(B).

If the payee timely provides a certified Form W–9 pursuant to the notice of the incorrect TIN, backup withholding will not commence on the account or will cease if the payor has already imposed backup withholding on the account under 3406(e)(5)(A). The payor must use the name and certified TIN provided by the payee on the Form W–9 on subsequent information returns required to be made with respect to the payee.

If the payee does not furnish another Form W–9 to the payor within the prescribed period, the payor must begin withholding on (1) any reportable payment made after the close of the 30th business day after the day the payor received notification from the Service or a broker that the payee provided an incorrect TIN and (2) any withdrawal that occurs after the close of the 7th business day after the day the payor received notification that the payee provided an incorrect TIN to the extent of reportable payments made to the payee after the date the payor received such notification and before the earlier of (1) the close of the 30th business day after the day the payor received notification of an incorrect TIN, (2) the date the payor receives a new certified TIN from the payee, or (3) the date of the withdrawal. For purposes of the preceding sentence all cash withdrawals in an amount up to the amount of reportable payments made during such period are treated as reportable payments.

After receiving notification of the incorrect TIN, the payor may elect, however, to begin backup withholding on reportable payments made at any time during the 30-business-day period unless backup withholding is required on a withdrawal as described in the preceding paragraph. Backup withholding applies to all existing accounts or instruments making reportable payments that a payor can locate using reportable payments that a payor can locate using reasonable care if the incorrect TIN is used on such accounts or instruments.

Backup withholding will continue until the payor receives a Form W–9 from the payee. The payor must stop backup withholding under section 3406(a)(1)(B) within 30 calendar days of receiving a Form W–9 from the payee. The payor, however, may elect to treat the TIN as having been received at any time within the 30-calendar-day period. The payee still may be subject to backup withholding if other provisions of section 3406(a)(1) require backup withholding.

The procedures and the backup withholding requirements described in the above paragraphs are effective only with respect to a notice of an incorrect TIN issued by the Service on or after January 1, 1988.

Two Notices of an Incorrect TIN Within 3 Calendar Years

If a payor receives two notifications of an incorrect TIN with respect to a payee, and if the payor is still using that second incorrect TIN with respect to reportable payments made to the payee, the payor must send a notice to the payee informing him that the payor must impose backup withholding on all reportable payments made on accounts or instruments for which that incorrect TIN is being used and must ignore any further TINs received from the payee for all existing accounts of the payee until the payor is notified by the Service that the payee has provided a correct TIN. Payors are responsible for determining whether they have received two notices within 3 calendar years. A notice of an incorrect TIN issued by the Service prior to January 1, 1988, shall not be considered in determining whether a payor has received two notices of an incorrect TIN with respect to a payee within 3 calendar years. Further, only those notices issued by the Service on or after January 1, 1990, shall be counted as the second of two notices of an incorrect TIN with respect to a payee within 3 calendar years. Thus, a notice issued by the Service in 1988 or 1989 will be counted as the first notice even though a payor may have received a notice in both years with respect to the same payee. Additionally, even though a payor receives two or more notices in the same calendar year with respect to a payee, those notices will be treated as one notice for that calendar year.

Miscellaneous

Payors are required to remit to the Service amounts withheld under section 3406(a)(1)(B) in the same manner as other backup withholding under section 3406(a)(1). See A–47 of § 35a.9999–1 for requirements relating to remitting to the Service amounts withheld under section 3406.

These regulations also explain how backup withholding applies, describe the manner in which the payee must furnish a TIN, and provide guidance on other procedural and miscellaneous issues.

Due Diligence

These regulations provide guidance concerning the rules under which a payor will be considered to have exercised due diligence in attempting to comply with his obligation to obtain and provide correct TINs to the Service.

Due Diligence Before Notification of an Incorrect TIN

(1) Due Diligence Requirements for Pre-1984 Accounts or Instruments

A payor will be treated as having exercised due diligence for his pre-1984 accounts or instruments (as defined in A-34 of § 35a.9999–1) if at least annually the payor solicits a TIN from the payee for whom the payor does not have a TIN provided under penalties of perjury. Generally, these mailings must meet the requirements of A-5 and A-6 and the related questions and answers on due diligence under § 35a.9999–1.

Some payors have questioned whether a return envelope is required in the nonseparate annual mailing which must be made for years after 1983 for pre-1984 accounts and instruments with respect to those payees who have not provided a certified TIN. These regulations clarify that a reply envelope (self-addressed) is required to be included in the annual mailing, but no penalties will be assessed against payors for failure to provide an reply envelope in nonseparate annual mailings made before January 1, 1988. Further, the failure to include the envelope in the mailing shall not be taken into account in determining whether a payor has exercised due diligence on the particular account in a subsequent calendar year.

Questions also have arisen concerning a TIN that is determined to be incorrect as a result of a human, clerical, or processing error (collectively defined as a "processing error"). Specifically, the question is whether a processing error is a defense to the penalty under section 6676(b). The regulations make clear that a penalty will be imposed for a processing error unless the payor has satisfied all the due diligence criteria set forth in § 35a.9999–1. The due diligence criteria require, in part, that the payor must use the same care in processing TINs that a reasonably prudent payor would use in the course of his business in handling account information, such as account numbers and account balances. Correlatively, a payor who otherwise satisfies the due diligence criteria but does not exercise care in processing TINs will be liable for the $50 penalty for each information return filed with an incorrect TIN as a result of the processing error. Of course, payors who did not undertake due diligence are liable for the penalty whether or not the TIN is incorrect due to a processing error.

Many payors of pre-1984 accounts or instruments have inquired how they can exercise due diligence with respect to those accounts or instruments for which they do not have a certified TIN if they missed one or more of the prescribed mailings or failed to follow properly the mailing procedures under A-5 and A-6 and under the related questions and answers on due diligence under § 35a.9999–1. These temporary regulations reiterate the rule provided in the earlier temporary regulations that a $50 penalty will be imposed on payors for each information return filed with an incorrect TIN or a missing TIN for which there is not a valid awaiting-TIN certification unless the payor (1) satisfied the cumulative due diligence requirements set forth in A-5 and A-6 of § 35a.9999–1 (and the related questions and answers on due diligence) for the account or instrument with respect to which an information return was filed with an incorrect or an missing TIN or (2) received a certified TIN from the payee and used it on information returns filed with respect to that payee for the calendar year subject to the penalty. (See the next topical heading which describes the requirement for obtaining prospective relief from the penalty for those payors who did not comply with the requirements set forth in A-5 and A-6 and in the related questions and answers under § 35a.9999–1 and who have not obtained a certified TIN with respect to such pre-1984 accounts or instruments.)

Thus, for example, if a payor receives notice from the Service in 1988 that an information return was filed in 1986 with an incorrect TIN, the payor is liable for the penalty for all information returns previously filed with that incorrect TIN unless the payor had a certified TIN from the payee at the time the information return was filed and used that number on the information return or made the mailings in the time and manner required by A–5 and A–6 and by the related questions and answers on due diligence under § 35a.9999–1. Except as provided below, payors who were required but failed to properly make the mailings with respect to accounts or instruments for which the payor does not have a certified taxpayer identification number are subject to penalties for any year with respect to which they file an information return with an incorrect or missing taxpayer identification number whether or not the payor made the mailings at a later date or imposed backup withholding on the payee.

(2) Prospective Relief Administrative Discretion

Even though a payor may have failed to undertake the mailings as described in A–5 and A–6 and in the related questions and answers on due diligence in § 35a.9999–1, in its administrative discretion the Service will not enforce the penalty with respect to information returns filed for the 1988 or subsequent calendar years with a missing or an incorrect TIN under the following circumstances: First, the payor must have sent a separate mailing by June 30, 1988, to *all* payees of pre-1984 accounts and instruments who have not provided a certified taxpayer identification number to the payor. Second, the payor must have sent nonseparate mailings requesting the certified taxpayer identification number by December 31 of each year subsequent to the year of the separate mailing to payees who have not by that time provided their certified taxpayer identification numbers. Third, if the payee has provided no taxpayer identification number or one which is obviously incorrect (*e.g.*, contains an incorrect number of digits), the payor must have commenced backup withholding on payments made after December 31, 1983. Fourth, the payor must use the same care in processing taxpayer identification numbers provided by payees that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

In addition, in order to receive administrative relief, each year a payor must make an affirmative showing to the satisfaction of the district director or director of the Internal Revenue Service Center that the person otherwise liable for such penalty fulfilled the above requirements or the mailings in § 35a.3406–1 (c) or (f)(2) of these regulations if applicable, with respect to the calendar year in question. A description of the rules for obtaining this relief is set forth in Q/A–56 of § 35a.9999–1.

(3) Due Diligence Requirements for Post-1983 Accounts

In general, a payor of an account or instrument that is a post-1983 account (as described in A–34 and A–41 of § 35a.9999–1) must obtain a certified TIN from the payee at the time the account is opened in order to satisfy due diligence. The Service believes that a certified TIN can be obtained most easily and efficiently at the time the account is opened. Thus, if a payor permits a payee to open an account or acquire an instrument without obtaining a certified TIN from the payee and an information return is filed by the payor with a missing or incorrect TIN, the payor will be liable for a penalty whether or not the payor backup withheld on the account.

These regulations also amplify the few limited circumstances in which due diligence may be shown by the payor in the absence of obtaining a certified TIN from the payee at the time the account is opened. These include cases where the payor used a TIN provided by a broker, cases in which a payor records on its books a transfer to which the payor was not a party, cases in which the payee provides the payor with an awaiting-TIN certification as discussed below, and cases in which the payor could have exercised due diligence only by incurring undue hardship. Generally,

undue hardship is an extraordinary cost or unexpected event such as the destruction of records or place of business by fire or other casualty. Thus, the Service anticipates that only in exceptional circumstances will there be an undue hardship preventing a payor from obtaining or reporting a certified TIN on an information return.

These regulations clarify the rules regarding how a payor may satisfy due diligence when the payee provides an awaiting-TIN certification but fails to provide a certified TIN within 60 days. If a payor obtains an awaiting-TIN certification in 1984, 1985, 1986, or 1987, in the manner provided in A–18 of § 35a.9999–2, the payor will be considered to have exercised due diligence by backup withholding on reportable payments made to the payee after the 60-day period if the payee fails to provide a certified TIN by that time. These regulations also provide that an awaiting-TIN certification received in 1984, 1985, 1986, or 1987 (hereinafter a "pre-1988 awaiting-TIN certification") shall become null and void on the later of 60 days after the day the awaiting-TIN certification is received or January 1, 1988, unless the payor (1) continues to backup withhold on reportable payments made to the account and (2) sends an annual mailing to the payee similar to the mailing described in A–5 and A–6 in the related questions and answers on due diligence under § 35a.9999–1 by December 31, of each calendar year until a certified TIN is received from the payee or the account is closed.

Different rules apply for awaiting-TIN certifications that are not pre-1988 awaiting-TIN certifications. A payor who receives an awaiting-TIN certification from a payee in 1988 or a subsequent calendar year must obtain a certified TIN from the payee within the 60-day period to show due diligence. In addition, to exercise due diligence the payor must backup withhold on any withdrawal during the 60-day period that occurs after the close of the 7th calendar day after the day the payor receives the certification to the extent of reportable payments made after the day the certification is received and before the earlier of (1) the date a certified TIN is received, (2) the end of the 60-day period, or (3) the date of withdrawal. For purposes of the preceding sentence all cash withdrawals in an amount up to the amount of reportable payments made during such period are treated as reportable payments.

In no certified TIN is provided by the payee within the 60-day period described above and the payor thereafter files an information return with respect to the payee, the payor will be liable for the penalty regardless of whether the payor imposed backup withholding on the payee after the 60-day period. The payor may close the account at the end of the 60-day period in order to avoid the penalty. A payor who closes an account because a payee fails to provide a certified TIN will not be in violation of the Internal Revenue Code. See Q-A–48 of § 35a.9999–1.

Due Diligence Following Notification of the First Incorrect TIN

If, on or after January 1, 1988, a payor is notified that he filed an information return with an incorrect TIN (for either pre-1984 or post-1983 accounts or instruments) and the payor continues to use that same incorrect number on the account, the payor must satisfy additional requirements in order to demonstrate due diligence for years beginning in the year he was notified. First, the payor must be exercising due diligence (or complying with the requirements for administrative relief under A–56 of § 35a.9999–1) at the time the payor receives notification of an incorrect TIN as decribed above. Second, the payor must send the notice prescribed in § 35a.3406–1(b)(1) or an acceptable substitute notice to the payee within 5 business days after the date the payor receives the notice of the incorrect TIN. Third, the payor must continue to send this notice (and not the notice described in A–5 and A–6 (or A–56) of § 35a.9999–1 by December 31 of each year to a payee who has not by that time responded to the notice by returning a certified From W–9 to the payor. Fourth, in the case of a payee who responds to the notice by providing a certified Form W–9, within 30 calendar days after receiving the certified Form W–9 from the payee the payor must use the name and TIN provided by the payee on a new Form W–9 on all subsequent information returns relating to that payee filed with the Service.

Due Diligence Following Notification of the Second Incorrect TIN

If, on or after January 1, 1988, a payor receives two notifications of an incorrect TIN within 3 calendar years (for either pre-1984 or post-1983 accounts) with respect to a payee and the payor continues to use that same incorrect number on the account of a payee, the payor must satisfy additional requirements to exercise due diligence for years beginning in the year he is notified. First, the payor must be exercising due diligence at the time the payor receives notification of an incorrect TIN. Second, the payor must send the notice prescribed in § 35a.3406–1(f) to the payee and code any information return that is filed with that incorrect TIN with the words "2nd notice." With respect to information returns so coded, the Service will not continue to notify payors that the payee provided an incorrect TIN. See the heading, "Two Notices of an Incorrect TIN within 3 calendar years", in this preamble for the circumstances under which a notice will be counted as the second of two notices within 3 calendar years.

Non-Applicability of Executive Order 12291

The Commissioner has determined that these temporary regulations are not a major rule subject to review under Executive Order 12291 and that a regulatory impact analysis, therefore, is not required.

Regulatory Flexibility Analysis

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regualtions subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection-of-information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0969.

Drafting Information

The principal author of these regulations is Renay France of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated, however, in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Accordingly, 26 CFR Part 35a is amended as follows:

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Paragraph 1. The authority for Part 35a continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 35a.3406-1 also issued under 26 U.S.C. 3406 (a), (b), (e), (g), (h), and (i); 26 U.S.C. 6109; and 26 U.S.C. 6676.

Par. 2. The heading for § 35a.3406-1 is revised and text is added thereto to read as follows:

§ 35a.3406-1 Imposition of backup withholding due to notification of an incorrect taxpayer identification number.

(a) *Requirement that a payor backup withhold due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, backup withholding under section 3406(a)(1)(B) applies to any reportable payment (as defined in section 3406(b) and paragraph (a)(2) of this section) made to an account (as defined in paragraph (a)(7) of this section) of a payee if, after December 31, 1987, the Internal Revenue Service or a broker (as defined in section 3406(h)(5) and pursuant to section 3406(d)(2)(B)(ii)(II)) notifies a payor (as defined in section 3406(h)(4)) that the payee's taxpayer identification number is incorrect (as defined in paragraph (a)(6) of this section) and such incorrect taxpayer identification number is used with respect to such account of the payee. The payor is required under section 3406(h)(8) and paragraph (c) of this section to send a copy of the notice received by the payor (from the Internal Revenue Service or a broker) to inform the payee that he has furnished an incorrect taxpayer identification number and that, as a result, he may be subject to backup withholding under section 3406(a)(1)(B). The requirements for the notice that a payor must send to a payee are set forth in paragraph (c)(3) of this section. An example of the notice required by paragraph (c)(3) is set forth in the Appendix to this section. The period for which backup withholding applies due to notification of an incorrect taxpayer identification number is described in paragraph (d) of this section. See paragraph (e) of this section for the rules regarding how a payee may prevent backup withholding from starting or to stop it once it has begun. See paragraph (f) of this section for the applicable rules when the Internal Revenue Service or a broker notifies a payor twice within 3 calendar years that a payee has furnished an incorrect taxpayer identification number. See section 6676 for the penalty that may be imposed on a payor for providing an incorrect or a missing taxpayer identification number on an information return filed with the Internal Revenue Service unless, in the case of reportable interest and dividend payments as defined in section 3406(b)(2), the payor has exercised due diligence (or complied with the rules under A-56 of § 35a.9999-1 to obtain administrative relief from the penalty or comes within a due diligence exception) or, in the case of other reportable payments as defined in section 3406(b)(3) the payor has exercised reasonable care. See the questions and answers in § 35a.9999-3 for the actions that a payor must take to exercise due diligence after being notified of an incorrect taxpayer identification number.

(2) *Definition of reportable payment*—(i) *In general.* See section 3406(b), and the questions and answers under §§ 35a.9999-1, 35a.9999-2, 35a.9999-3A, and 35a.9999-5 for the definition of a reportable payment.

(ii) *Exceptions.* The following payments are not "reportable payments" for purposes of section 3406(a)(1)(B):

(A) *Section 6041(a) or section 6041A(a) payments.* Payments described in sections 6041(a) and 6041A(a) are not treated as reportable payments for purposes of backup withholding under section 3406(a)(1)(B) if reportable payments to the payee—

(*1*) Are less than $600 in the aggregate during the calendar year;

(*2*) The payor was not required to file an information return under section 6041(a) or 6041A(a) with respect to that payee for the preceding calendar year; and

(*3*) The payor was not required to impose backup withholding on payments made to the payee as described in section 6041(a) or 6041A(a) during the preceding calendar year.

See Code section 3406(b)(6), A-11 of § 35a.9999-2, and A-13, A-14, A-15, A-16, A-17, A-18, and A-19 of § 35a.9999-3 for more information on amounts subject to information reporting under sections 6041(a) and 6041A(a).

(B) *Patronage Dividends.* Payments of patronage dividends as described in section 3406(b)(2)(A)(iii) are not treated as reportable interest or dividend payments for purposes of backup withholding under section 3406(a)(1)(B) unless the payment is in money.

(C) *Section 6050A payments.* Payments under section 6050A are treated as reportable payments for purposes of backup withholding under section 3406(a)(1)(B) only to the extent such payments are in money and represent a share of the proceeds of the catch.

(D) *Window payments.* Window payments as defined in A-42 of § 35a.9999-1 and A-9 of § 35a.9999-2 are not treated as reportable payments for purposes of backup withholding under section 3406(a)(1)(B).

(3) *Reportable payments excluded from backup withholding.* The following reportable payments are not subject to backup withholding under section 3406(a)(1)(B):

(i) *Certain dividends.* Certain reportable dividend payments as defined in A-9 of § 35a.9999-3.

(ii) *Certain section 6041(a) and 6041A(a) payments.* Certain section 6041(a) and 6041A(a) payments as described in A-13 and A-14 of § 35a.9999-3.

(iii) *Exempt recipients.* Certain reportable payments made to exempt recipients as described in A-21 of § 35a.9999-2 and A-13 of § 35a.9999-3.

(iv) *Minimal payments.* Minimal payments of reportable interest and dividends and section 6045 payments (as described in A-19 of § 35a.9999-2), if the payor elects not to impose backup withholding on such amounts.

(v) *Net commissions.* Net commissions as described in A-17 of § 35a.9999-3 unless there is a payment in cash.

(vi) *Original issue discount.* Original issue discount as defined in section 1273, unless there is a payment in cash. See A-15 of § 35a.9999-2.

(vii) *Security sales through margin account.* Certain gross proceeds from a security sale through a margin account as described in A-24 of § 35a.9999-3.

(viii) *Security short sales.* Certain gross proceeds with respect to a short sale of securities, at the option of the broker, as described in A-25 of § 35a.9999-3.

(ix) *Payments subject to other withholding.* Payments already subject to withholding under section 3406 or another provision of the Internal Revenue Code, *e.g.*, as described in A-19 of § 35a.9999-3.

(4) *Definition of payor.* See section 3406(h)(4) for the definition of a payor.

(5) *Definition of broker.* See section 3406(h)(5) for the definition of broker.

(6) *Definition of incorrect taxpayer identification number.* An incorrect taxpayer identification number is any number that, at the time the Internal Revenue Service makes a determination that the taxpayer identification number is incorrect—

(i) Is not assigned under section 6109 to any surname of the payee, or

(ii) Is not assigned by the Internal Revenue Service to the name of a nonindividual such as a corporation, estate, partnership, or trust,

and that was provided on an information return filed with respect to a payee.

(7) *Definition of account.* The term "account" means any account, instrument, or other relationship with a payor.

(b) *Notice regarding an incorrect taxpayer identification number*—(1) Notice from the Internal Revenue Service to payors and brokers. The Internal Revenue Service will notify—

(i) Payors that a payee's taxpayer identification number is incorrect and that the payor must commence backup withholding as required under section 3406(a)(1)(B) and paragraphs (d) and (f) of this section on reportable payments made to accounts of the payee as defined in paragraph (a)(7) of this section that contain such incorrect taxpayer identification number, and

(ii) Brokers that a payee's taxpayer identification number is incorrect and that the broker must notify a payor that the payee is subject to backup withholding under section 3406(a)(1)(B) on accounts of the payee as defined in paragraph (a)(7) of this section that contain that incorrect taxpayer idenfification number.

The Internal Revenue Service will furnish the payor or broker with a copy of the notice and the payor shall furnish such copy, or an acceptable substitute copy, to the payee as described in paragraph (c) of this section.

(2) *Notice from a broker to a payor.* A broker who receives a notice from the Internal Revenue Service pursuant to paragraph (b)(1)(ii) of this section that a payee has furnished an incorrect taxpayer identification number and through whom the payee subsequently acquires a readily tradable instrument (as defined in section 3406(h)(6)) with respect to which the broker is not the payor as defined in section 3406(h)(4) must notify the payor of that instrument of the following information:

(i) The fact that the broker was notified by the Internal Revenue Service that the payee furnished an incorrect taxpayer identification number and the date set forth on such notice from the Internal Revenue Service,

(ii) The name and taxpayer identification number of the payee with respect to whom the broker was notified, and

(iii) The fact that the named payee is subject to backup withholding under 3406(a)(1)(B).

The broker is required to provide this information to the payor of the instrument in the time and manner provided in A–41 of § 35a.9999–1. A broker is required to exercise reasonable care as prescribed in paragraph (b)(5)(ii) of this section in locating all accounts of the payee with respect to which the broker is required to notify a payor under this paragraph (b)(2).

(3) *Accounts subject to backup withholding.* After receiving notice from the Internal Revenue Service or from a broker, as provided in paragraph (b) (1) and (2) of this section, the payor is required to notify the payee in accordance with paragraph (c) of this section and to institute backup withholding as prescribed in paragraph (d) of this section on all reportable payments subject to backup withholding that are made to any account of the payee that contains the incorrect taxpayer identification number. See paragraph (f) of this section for the rules that apply when a payor has received two notifications of an incorrect taxpayer identification number with respect to a payee from the Internal Revenue Service or a broker within 3 calendar years. See paragraph (b)(5) of this section for an exception to the rule that a payor backup withholds on all accounts of a payee paying reportable payments subject to backup withholding.

(4) *Joint accounts*—(i) *In general.* Generally, payors are required to backup withhold on reportable payments made to the account of joint payees if the payee subject to backup withholding under section 3406(a)(1)(B) is the first person listed on the account at the time the payor receives the notice under paragraph (b) (1) or (2) of this section.

(ii) *Exception.* In the case where the first person listed on the account is an exempt foreign person for information reporting purposes under the applicable information reporting provisions and the account contains the names of persons who are not foreign persons, the payor is required to backup withhold on the account if the incorrect taxpayer identification number matches the name and number combination of the person on the account used for information reporting.

(iii) *Change in order of names.* If the account of a payee may be subject to backup withholding as described in paragraph (b)(4) of this section, backup withholding shall apply, if required, even though the order of the names on the account is subsequently changed, provided that the incorrect taxpayer identification number giving rise to backup withholding remains on the account.

(5) *Reasonable care exception*—(i) *Payors.* Payors are not required to withhold on reportable payments made to an account of a payee that could not be located with reasonable care. A payor will be considered to have exercised reasonable care if the payor uses the name, taxpayer identification number, and any account numbers provided on the notice from the Internal Revenue Service or from a broker as described in paragraph (b) (1) and (2) of this section is locating all accounts of a payee.

(ii) *Brokers.* Brokers are not required to notify payors of the accounts of payees that could not be located with reasonable care as described in paragraph (b)(5)(i) of this section. Thus, brokers are required to use the information and follow the procedures described in paragraph (b)(5)(i) to locate accounts of the payee with respect to which a broker is required to notify a payor pursuant to paragraph (b)(2) of this section.

(c) *Notice from payors of backup withholding due to an incorrect taxpayer identification number*—(1) *In general.* If the name and taxpayer identification number listed on the notice from the Internal Revenue Service or a broker as described in paragraph (b) (1) or (2) of this section matches the name and taxpayer identification number used on the payee's account at the time the payor receives the notification of an incorrect taxpayer identification number—

(i) The payor who receives a notice from the Internal Revenue Service is required under section 3406(h)(8) to send a copy of the notice required by paragraph (b)(1) of this section or a substitute notice as described in paragraph (c)(3) of this section to the payee of the account in accordance with paragraph (c)(2) of this section (an example of the notice from the Internal Revenue Service required by section 3406(h)(8) and paragraph (b)(1) of this section is set forth in the Appendix to these temporary regulations), and

(ii) The payor who receives notification of an incorrect TIN from a broker as described in paragraph (b)(2) of this section must send a substitute notice as described in paragraph (c)(3) of this section to the payee in accordance with paragraph (c)(2) of this section.

If a payor sends a substitute notice, such notice must include all the information set forth in paragraph (c)(3) of this section. In addition to the copy of the notice required by paragraph (b)(1) of this section or the substitute notice described in paragraph (c)(3) of this section, the payor must include a Form W–9 or an acceptable substitute form (as described in A–36 or § 35a.9999–1) with the notice for the payee to use to provide his name and taxpayer identification number and to certify that

the taxpayer identification number is correct, or to provide his name and the taxpayer identification number that was originally furnished and to certify that such taxpayer identification number is correct. The payor is required to include a reply envelope (self-addressed) with the notice to the payee which may, but is not required to, be postage prepaid. The envelope containing the notice and Form W-9 or acceptable substitute form must state on the outside in a bold and conspicuous manner: "Important Tax Document Enclosed". The mailing may not include any material other than the notice, the Form W-9 or acceptable substitute form, and the reply envelope to the payee. The notice required by paragraph (c) of this section, and not the notice required by A-39 of § 35a.9999-1 and in the Appendix to § 35a.9999-2, shall apply to those payors notified by a broker that a payee is subject to backup withholding under section 3406(a)(1)(B). For purposes of this section, the date set forth on the notice from the Internal Revenue Service (or a broker) shall be considered the date of receipt by and of notification to the payor.

(2) *Procedure.* The payor must send the notice described in paragraph (c) of this section to the payee within 5 business days after the date that the Internal Revenue Service or a broker notifies the payor pursuant to paragraph (b) (1) or (2) of this section. The payor must mail the notice to the payee's last known address by first-class mail. If it is the customary practice of the payor not to mail and correspondence to a payee, the payor may furnish the notice by personal delivery, by intra-office mail, or by any other means reasonably expected to furnish the notice to the payee promptly. A payor is not required to send the notice to the payee if there is currently a "do not mail" or a "stop mail hold" instruction with respect to the payee's account subject to backup withholding under section 3406(a)(1)(B). However, the payor must handle the notice in the same manner that the payor handles other correspondence of the payee.

(3) *Requirements of substitute notice to the payee.* If the payor does not send a copy of the notice received from the Internal Revenue Service pursuant to paragraph (b) or if the payor is notified by a broker as described in paragraph (b)(2) of this section that the payee provided an incorrect taxpayer identification number, the payor may send a substitute notice as provided for in this paragraph (c)(3). The notice to the payee will satisfy the requirement of section 3406(h)(8) and paragraph (c)(1) of this section if the notice—

(i) Informs the payee that the payor has been notified that the taxpayer identification number furnished by the payee is an incorrect number (as defined in paragraph (a)(6) of this section);

(ii) Advises the payee of the name and taxpayer identification number combination that the Internal Revenue Service has determined to be incorrect;

(iii) Informs the payee that the payee must either—

(A) Correct the surname (or business name) or taxpayer identification number (or both) and certify, under penalties of perjury, that the newly provided taxpayer identification number is correct, or

(B) State—

(*1*) Under penalties of perjury that the taxpayer identification number originally furnished to the payor is correct and provide that number and the corresponding listed surname (or business name),

(*2*) That the Social Security Administration (or the local office of the Internal Revenue Service in the case of an incorrect employer identification number) has been contacted by the payee to resolve the problem giving rise to the notification of an incorrect taxpayer identification number, or

(C) In the case of a notification of an incorrect taxpayer identification number of an individual payee due to a name change by the payee when the payee has not communicated the change of name to the Social Security Administration—

(*1*) Contact the Social Security Administration and reassign the taxpayer identification number to the surname that is used on the account with the payor, certify under penalties of perjury that the existing taxpayer identification number shown on the account is correct (and provide the corresponding surname used with that number), and provide a statement that the Social Security Administration has been contacted to reassign the taxpayer identification number to the surname shown on the account, or

(*2*) Use both surnames on the account with the payor (the surname currently shown on the account and the surname shown on the payee's Social Security Administration card if the payee is unable to contact the Social Security Administration at this time) provide the surnames and certify, under penalties of perjury, that the furnished taxpayer identification number is correct, and

(*3*) Follow either paragraph (c)(3)(iii)(C) (*1*) or (*2*) of this section consistently with respect to all accounts with the payor;

(iv) Advises the payee how to provide the new information to the payor;

(v) Advises the payee to contact the Social Security Administration to obtain a social security card if the payee was never assigned an SSN or to obtain a replacement social security card if the payee lost his card and does not remember his SSN;

(vi) Advises the payee that as a result of providing an incorrect taxpayer identification number, the payor is required under section 3406(a)(1)(B) of the Internal Revenue Code to begin backup withholding 20 percent of—

(A) Reportable payments made to the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number if the payee has not provided the payor with the required certification, i.e., the Form W-9, and

(B) Any withdrawals of reportable payments by the payee (or a joint payee in the case of a joint account) that occur after the close of 7 business days after the date that the payor received notice of the incorrect taxpayer identification number and before the day that is 31 business days after the day that the payor received notice of the incorrect taxpayer identification number, if the payee has not provided the payor with the required certified Form W-9 prior to any such withdrawals;

(vii) Gives the payee the date that the payor received the notice that the payee provided an incorrect taxpayer identification number; and

(viii) States that the payee must complete and return the enclosed Form W-9 and if necessary, the statement that the payee contacted the Social Security Administration (or the Internal Revenue Service) before the time described in paragraph (c)(3)(vi) of this section in order to prevent backup withholding under section 3406(a)(1)(B) from starting, or after the time described in paragraph (c)(3)(vi) of this section to stop backup withholding once it has begun and to avoid the imposition of other penalties for failure to provide a correct taxpayer identification number.

(4) *Payor must use new certified number.* If the payor receives a certified Form W-9 or acceptable substitute form from the payee in the manner required in paragraph (e) of this section before the end of a calendar year, the payor shall use the name and certified taxpayer identification number on the Form W-9 or acceptable substitute form on information returns that the payor is required to file for reportable payments made with respect to the payee for that year and subsequent calendar years. A

payor who uses the name and certified taxpayer identification number on an information return as described in this paragraph will satisfy the requirement to provide this information to the Internal Revenue Service as prescribed in section 3406(h)(9).

(d) *Period during which backup withholding is required due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, upon receiving a notice described in paragraph (b) (1) or (2) of this section, the payor must impose backup withholding on all reportable payments made to the payee that are subject to backup withholding during the following periods:

(i) After the close of the 30th business day after the date the payor receives the notice described in paragraph (b) (1) or (2) of this section and on or before the close of the 30th calendar day after the day the payor receives from the payee the certification described in paragraph (e) of this section, and

(ii) At the time of any withdrawal by the payee (or a joint payee in the case of a joint account) that occurs after the close of 7 business days after the date the payor receives the notice described in paragraph (b) (1) or (2) of this section to the extent of reportable payments made after receiving the notice described in paragraph (b) (1) or (2) of this section and before the earlier of—

(A) The date the payor imposes backup withholding under paragraph (d)(1)(i) of this section,

(B) The date the payor receives the certification described in paragraph (e) of this section, or

(C) The date of the withdrawal.

For purposes of paragraph (d)(1)(ii), all cash withdrawals in an amount up to the amount of reportable payments made during the period beginning after the day that the payor receives the notice described in paragraph (b) (1) or (2) of this section to the end of the period described in paragraph (d)(1)(ii) (A), (B), or (C) of this section are treated as reportable payments. The payor is required to backup withhold 20 percent of all reportable payments subject to backup withholding under section 3406(a)(1)(B) that are made with respect to any account of the payee where that incorrect taxpayer identification number is used (or will be used) by a payor on an information return. However, the payor is not required to backup withhold on any account that could not be located using reasonable care. See paragraph (b)(5) of this section for the definition of reasonable care.

(2) *Grace periods*—(i) *Starting backup withholding.* Pursuant to section 3406(e)(5)(A), the payor may elect, on a payee-by-payee basis or in general, to begin backup withholding at any time during the 30-business-day period described in paragraph (d)(1)(i) of this section. However, a payor must impose backup withholding if there is a withdrawal from the account of the payee as described in paragraph (d)(1)(ii) of this section.

(ii) *Stopping backup withholding.* Pursuant to section 3406(e)(5)(B), the payor may elect, on a payee-by-payee basis or in general, to treat the certified Form W-9 or acceptable substitute form described in paragraph (e) of this section as having been received at any time within 30 calendar days after such certification is provided by the payee and to stop backup withholding at any time within such 30-day period. See section 3406(e)(5)(B) and A-31 of § 35a.9999-1 for the application of the rules contained in this paragraph (d)(2).

(e) *Manner required for payee to furnish certified taxpayer identification number.* A payee with respect to whom the payor has been notified (as described in paragraph (b) of this section) that the payee's taxpayer identification number is incorrect is required to provide his name and taxpayer identification number and to certify, under penalties of perjury, that the taxpayer identification number being provided to the payor on a Form W-9 or acceptable substitute form is correct in order to prevent backup withholding from starting or to stop it once it has begun. Additionally, the payee may be required to state on the notice provided to the payor, as described in paragraph (c)(3)(iii)(C)(*1*) of this section, the the Social Security Administration (or the Internal Revenue Service) was contacted by the payee within 30 calendar days from the date of the notice from the payor. In general, the payee is required to provide the information described in this paragraph for each account, including any pre-1984 account or instrument (as defined in A-34 of § 35a.9999-1 and A-20 of § 35a.9999-3) that contains the incorrect taxpayer identification number identified by the Internal Revenue Service pursuant to paragraph (b) (1) or (2) of this section. See A-9, A-10, and A-49 of § 35a.9999-1 which respectively provide that the Form W-9 is the prescribed form for the payee to make the certification, permit the use of substitute forms, and explain who may sign the form. See paragraph (f)(1) of this section for the rules on obtaining a certified taxpayer identification number after a payor is notified twice within 3 calendar years that a payee's taxpayer identification number is incorrect.

Notification of two incorrect taxpayer identification numbers within a 3-year period—(1) *In general.* If, with respect to a payee, a payor receives a notification as described in paragraph (b) (1) or (2) of this section twice within 3 calendar years, and if an existing account of the payee reflects the incorrect taxpayer identification number when the payor receives the second notice described in paragraph (b) (1) or (2) of this section, then the payor shall—

(i) Disregard any future certifications (described in paragraph (e) of this section) furnished by the payee with respect to existing accounts with the payor.

(ii) Send the notice described in paragraph (f)(2) of this section to the payee (and not the notice required under paragraph (c) of this section) within 5 business days after the date that the payor receives the notice described in this paragraph (f), and

(iii) Impose backup withholding on any account containing the incorrect taxpayer identification number for the period described in paragraph (f)(3) of this section.

For purposes of this paragraph (f), a payor shall not count any notice received from the Internal Revenue Service or a broker prior to January 1, 1990, as the second of two notices. Additionally, a payor shall treat the receipt of two or more notices in a calendar year as described in paragraph (b) (1) or (2) of this section with respect to the same payee as the receipt of one notice for purposes of this paragraph. The preceding sentence applies only with respect to a payor who received such two or more notices under the same Employer Identification Number. The payor shall maintain sufficient records to determine whether the payor has received notices described in this paragraph and paragraph (b) (1) or (2) of this section twice within 3 calendar years with respect to a payee as described in this paragraph (f). The envelope containing the notice must state on the outside in a bold conspicuous manner: "Important Tax Document Enclosed". The payor is not required to include a Form W-9, nor is the payor required to include a reply envelope in the mailing of the notice to the payee. The payor may not include any material in the mailing of the notice described in this paragraph (f). The notice requirements provided in this paragraph (f), and not the notice requirements provided in A-39 of § 35a.9999-1 and in the Appendix to § 35a.9999-2, shall apply to a payor notified by a broker that a payee is subject to backup withholding under

section 3406(a)(1)(B). The mailing procedure described in paragraph (c)(2) of this section shall apply to the mailing of the notice described in paragraph (f) of this section.

(2) *Notice to payee who has provided two incorrect taxpayer identification numbers within 3 years.* The notice to the payee required by paragraph (f)(1) of this section must list, in a bold and conspicuous manner, the payor's access key number, the relevant sequence number, the date the payor was notified of the second incorrect taxpayer identification number, the payee's name, address (including street, city, state, (or country) and zip or mailing code), and such other information that may be required by revenue procedures and revenue rulings. In addition the notice must state that—

(i) The payor has been notified that the taxpayer identification number furnished by the payee is incorrect, setting forth the name and taxpayer identification number that the Internal Revenue Service has determined to be incorrect and the specific account number that contains the incorrect taxpayer identification number;

(ii) The payor has been notified twice within 3 calendar years that the payee has furnished an incorrect taxpayer identification number on an account with the payor;

(iii) The payor is required to disregard any future taxpayer identification numbers, whether or not certified under penalties of perjury, received from the payee with respect to existing accounts with the payor;

(iv) As a result of providing an incorrect taxpayer identification number, the payor is required under section 3406(a)(1)(B) with respect to any account of the payee that contains that incorrect taxpayer identification number when the payor is notified that the number is incorrect as described in paragraph (f) of this section, to begin backup withholding 20 percent of—

(A) Reportable payments made to the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number, and

(B) Any withdrawals of reportable payments by the payee (or a joint payee in the case of a joint account) that occur after the close of 7 business days after the date that the payor received the second notice of an incorrect taxpayer identification number and before the day that is 31 business days after the date that the payor received such notice if the Internal Revenue Service has not notified the payor that the payee provided a correct taxpayer identification number to the Internal Revenue Service; and

(v) The payee must contact the Internal Revenue Service Center where the payee is required to file his income tax return in order to prevent backup withholding under section 3406(a)(1)(B) from starting or to stop it once it has begun.

(3) *Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.* Upon receiving the second notice of an incorrect taxpayer identification number from the Internal Revenue Service or a broker as described in paragraph (f)(1) of this section, the payor must backup withhold on all reportable payments subject to backup withholding (as described in this paragraph) made to the payee—

(i) After the close of the 30th business day after the day on which the payor receives a notice described in paragraph (b) (1) or (2) of this section and ending as of the close of the 30th calendar day after the payor receives the notification from the Internal Revenue Service as described in paragraph (h) of this section, or

(ii) At the time of any withdrawal by the payee (or a joint payee in the case of a joint account) that occurs after the close of 7 business days after the date the payor receives the notice described in paragraph (b) (1) or (2) of this section and before the earlier of—

(A) The date payor imposes backup withholding as described in paragraph (f)(3)(i) of this section,

(B) The date the payor receives notification from the Internal Revenue Service as described in paragraph (h) of this section, or

(C) The date of withdrawal.

For purposes of paragraph (f)(3)(ii) of this section, all cash withdrawals in an amount up to the amount of the reportable payments made during the period beginning from the day after the day that the payor received the notice described in paragraph (b) (1) or (2) of this section to the end of the period described in paragraph (f)(3)(ii) (A), (B), or (C) are treated as reportable payments. The payor is required to withhold 20 percent of all reportable payments that are made with respect to accounts that the payee maintains with the payor at the time the payor received the second notice of an incorrrect taxpayer identification number if that incorrect taxpayer identification number is used by the payor on the account. However, the payor is not required to backup withhold on any account that could not be located using reasonable care. See paragraph (b)(5) of this section for the definition of reasonable care. The payor may not stop backup withholding under paragraph (f)(3) of this section even if the payee provides the certification described in paragraph (e) of this section.

(4) *Grace periods*—(i) *Starting backup withholding.* Pursuant to section 3406(e)(5)(A), the payor may elect, on a payee-by-payee or in general, to begin backup withholding at any time during the 20-business-day period described in paragraph (f)(3)(i) of this section. However, a payor must impose withholding as described in paragraph (f)(3)(ii) of this section if there is a withdrawal from the account of the payee.

(ii) *Stopping backup withholding.* Pursuant to section 3406(e)(5)(B), the payor may elect, on a payee-by-payee basis or in general, to treat the notification from the Internal Revenue Service as described in paragraph (h) of this section as having been received at any time within 30 calendar days after such notification is provided by the Internal Revenue Service and to stop backup withholding at any time within 30 calendar days of receiving such notice. See A–31 of § 35a.9999–1 for the application of the rule contained in this paragraph (f)(4)(ii).

(g) *Procedure for furnishing a correct taxpayer identification number to the Internal Revenue Service.* The procedure that a payee must follow after the Internal Revenue Service or a broker has notified a payor twice within 3 calendar years that the payee provided an incorrect taxpayer identification number as described in paragraph (f)(1) of this section will be provided in a revenue procedure published by the Internal Revenue Service.

(h) *Notice from the Internal Revenue Service to stop backup withholding.* A payor who received a notice pursuant to paragraph (f) of this section will be notified by the Internal Revenue Service to stop backup withholding after the Internal Revenue Service receive a correct taxpayer identification number from the payee. A broker who received a notice pursuant to paragraph (b) of this section will be notified by the Internal Revenue Service that the payee is no longer subject to backup withholding under section 3406(a)(1)(B) and that the broker is no longer required to provide notices to payors under paragraph (b)(2) of this section. A broker who receives a notice under this paragraph (h) from the Internal Revenue Service is not required to provide the notice to any payor to which the broker has previously provided the notice

required under paragraph (b)(2) of this section.

(i) [Reserved].

(j) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). D opened an account with Bank O prior to 1984 and furnished a taxpayer identification number to O at the time he opened the account. O is open for business Monday through Friday. O pays interest on the account at the end of each calendar quarter, and the account is a pre-1984 account as described in A–34 of § 35a.9999–1 and A–20 of § 35a.9999–3. On July 1, 1988, the Internal Revenue Service notifies Bank O that the taxpayer identification number provided by D is incorrect. O timely sends the notice information to D as required in paragraph (c)(1) of this section. O does not receive a certification from D as described in paragraph (e) of this section. O is required to backup withhold 20 percent of (i) all reportable payments made after August 15, 1988 (which is 30 business days after the date the Internal Revenue Service notified O), and (ii) any withdrawal made after July 13, 1988 (which is 7 business days after the day that O was notified by the Internal Revenue Service) and on or before August 15, 1988, to the extent of the reportable payments made between July 2, 1988, and the date of withdrawal if earlier than August 16, 1988, or the date O receives the certification as described in paragraph (e) of this section from D. Therefore, O is required to backup withhold on the reportable payment made on September 30, 1988. O is required to continue to backup withhold under section 3406(a)(1)(B) until O receives the certification described in paragraph (e) of this section from D.

Example (2). Assume the same facts as in *Example (1)* except that D furnishes a new taxpayer identification number to O on August 7, 1988, but does not certify, under penalties of perjury, that it is his correct taxpayer identification number as required in paragraph (e) of this section. Even though the account is a pre-1984 account, O is required to withhold 20 percent of (i) all reportable payments made after August 15, 1988 (which is 30 business days after the date the Internal Revenue Service notified O), and (ii) any withdrawal made by O after July 13, 1988 (which is 7 business days after the day that O was notified by the Internal Revenue Service) and on or before August 15, 1988, to the extent of the reportable payments made between July 2, 1988, and the date of withdrawal if earlier than August 16, 1988, or the date O receives the certified taxpayer identification number as described in paragraph (e) of this section from D.

Example (3). Assume the same facts as in *Example (2)* except that D provides O with the certification described in paragraph (e) of this section on August 31, 1988. D elects pursuant to paragraph (d)(2) of this section to treat the certification as received on August 31, 1988. Even though D did not provide the certification to O within 30 business days after the Internal Revenue Service notified O that D provided an incorrect taxpayer identification number, O is not required to backup withhold under section 3406(a)(1)(B) because D did not make any withdrawal and O did not make any reportable payment to D after notification of an incorrect taxpayer identification number and before O received D's certification in the manner required in paragraph (e) of this section. Pursuant to section 3406(e)(5)(B), O may elect to treat the certification as having been received at any time within 30 calendar days after it is provided by D.

Example (4). Individual E has an account with Credit Union P that will pay interest on the first day of each month. Credit Union P is open for business Monday through Friday. The account is a pre-1984 account. E has furnished his taxpayer identification number to P. On June 1, 1988, the Internal Revenue Service notifies P that E's taxpayer identification number is incorrect as defined in paragraph (a)(6) of this section. P sends a copy of the notice information described in paragraph (b)(1) of this section to E, and P receives the certification described in paragraph (e) of this section from E on August 16, 1988. P is not required to backup withhold on the reportable payment made on July 1 because backup withholding under section 3406(a)(1)(B) may not apply until after the close of the 30th business day after the date that the Internal Revenue Service notifies P of the incorrect taxpayer identification number unless E withdraws funds before that date. P is required to withhold 20 percent of the reportable payment made on August 1, however, because that is a reportable payment made more than 30 business days after the date the Internal Revenue Service notifies P and before P receives the certification described in paragraph (e) of this section from E. P is required to backup withhold on September 1 unless P elects pursuant to paragraph (d)(2) of this section to treat E's certification as having been received by that date. P is required to stop backup withholding by September 15, 1988.

Example (5). Assume the same facts as *Example (4)* except that E makes a withdrawal on July 1, 1988. P is required to withhold 20 percent of the withdrawal, to the extent of reportable payments made to the account from June 2, 1988, to July 1, 1988, because the withdrawal occurred after the close of 7 business days after the date P was notified by the Internal Revenue Service of the incorrect taxpayer identification number and on or before 30 business days after the date the Internal Revenue Service notified P of the incorrect taxpayer identification number.

Example (6). Assume the same facts as in *Example (4)* except that the Internal Revenue Service notifies P again on November 9, 1990, that E's taxpayer identification number is incorrect. P is required to maintain its business records in a manner that P can determine that the Internal Revenue Service has notified P twice within a 3-year period that E's taxpayer identification number is incorrect. P is required to send the notice described in paragraph (f)(2) of this section to E. E does not make any withdrawal from the account after November 9, 1990. Under paragraph (f) of this section, P is required to begin backup withholding on reportable payments made after December 24, 1990 (after the close of the 30th business day after the day Internal Revenue Service notifies P), and P is required to continue backup withholding until the Internal Revenue Service notifies P to stop backup withholding because E has furnished a correct taxpayer identification number to the Internal Revenue Service. Because P has been notified twice in a 3-year period that E's taxpayer identification number is incorrect, P may not stop withholding under section 3406(a)(1)(B) even if E furnishes another certification described in paragraph (e) of this section to P.

Example (7). Individual F has three post-1983 accounts with Bank R that pay reportable interest: a checking account, a savings account, and a money market account. The checking and money market account were opened in 1986 and the saving account was opened in October of 1988. R treats each of these accounts as a separate account with the Bank. F provided R with the certifications as described under A–32 of § 35a.9999–1 at the time each account was opened. On June 1, 1988, the Internal Revenue Service notified R pursuant to paragraph (b)(1) of this section that F furnished an incorrect taxpayer identification number. From its business records, R determined that only the money market account contains the incorrect taxpayer identification number. R timely sends F the notice required under paragraph (b)(1) of this section and receives the certification required under paragraph (e) of this section from F on June 30, 1988. On November 15, 1990, the Internal Revenue Service notifies R that F furnished an incorrect taxpayer identification number. R determines from its business records that two notifications of an incorrect taxpayer identification number have been received with respect to F within 3 calendar years. R checks all accounts of F and determines that only the savings account contains the incorrect taxpayer identification number. R must send F the notice required under paragraph (f)(2) of this section and must commence backup withholding on reportable interest paid on the savings account pursuant to paragraph (f)(2) of this section after December 31, 1990. R must continue to backup withhold on the savings account until the Internal Revenue Service notifies R pursuant to paragraph (h) of this section that F has furnished a correct taxpayer identification number.

Appendix to § 35a.3406–1

A notice required by paragraph (c) (3) of this section shall be substantially similar in content to the following.

Date ———————————

Important Tax Information—Please Read Carefully

Notice of Backup Withholding

We received a notice from the Internal Revenue Service (IRS) stating that the taxpayer identification number (TIN) on your account with us is incorrect. A TIN is incorrect if either the name or number shown on an account does not match a name and number combination shown on the records of

the Social Security Administration (SSA) or IRS. You must act to correct this problem within 30 calendar days from the date shown above. Otherwise, we may be required to withhold 20% of the interest, dividends, and certain other payments that we make to your account.

Section 3406 of the Internal Revenue Code requires that we withhold 20% in tax, called backup withholding, when you do not give us your correct TIN. Further, you may be subject to a $50 penalty by the IRS under section 6676 of the Internal Revenue Code for failing to provide us with your correct TIN. This notice provides you with instructions to correct your account record in order to avoid backup withholding and the possible imposition of the penalty.

Instructions For Individuals

For individuals, the TIN is the social security number (SSN). Very often a TIN is incorrect because of a name change due to marriage, divorce, adoption or some other reason that has not been communicated to the Social Security Administration (SSA) and recorded on its records. Alternatively, the account may not contain the correct SSN of the actual owner. For example, an account in a child's name may contain a parent's SSN. An account should be titled in the name of the actual owner of the account with that person's SSN.

What to Do

To determine what actions you should take to correct your TIN, compare the name and SSN on your account with us (listed on page 3) with the name and SSN shown on your social security card and then follow the chart below to determine what action you should take. (If you have never been assigned a SSN by SSA or if you lost your card and do not know your SSN, contact your local SSA office to apply for an original or a replacement SSN card, whichever is required. Also, *read* the enclosed Form W-9, write the words "applied for" on the form according to its instructions, and return the form to us. You do not need to follow the chart below. You must send us your name and SSN, as shown on the SSN card that you get from SSA, on a Form W-9 within 60 days.)

If—	Then—
1. The last name and SSN on your account agree with the last name and SSN on your social security card_____.	1. Contact your local SSA office to ascertain why the information on SSA's records is different from that on your social security card and to resolve that problem. Also, put your name and SSN on the enclosed Form W-9 according to its instructions. Sign the Form W-9 and the statement below that you contacted SSA. Send both forms to us.
2. The SSN on your account is different from the SSN on your social security card, but the last name is the same _____.	2. Put your name and SSN, shown on your social security card, on the enclosed Form W-9 according to its instructions, sign it and send it to us. No contact with SSA is necessary.
3. The last name on your account is different from the last name on your social security card, but the SSN is the same on both _____.	3. Take one of the following steps (but not all): If the last name on your account is correct, (a) Contact SSA to correct the name on your social security card. Put your SSN and name shown on your account on the enclosed Form W-9 according to its instruction, sign it and the statement that you contacted SSA. Send both forms to us. (b) If you are not able to contact SSA at this time, you can provide us with both last names. Put your SSN and the name shown on your social security card plus the last name shown on your account (in that order) on the enclosed Form W-9 according to its instructions, sign it, and return it to us. For example, if your social security card lists your maiden name, you can provide us with your SSN and your name in the following order: First/maiden/married name. Please note, however, that you should contact SSA as soon as possible. If the last name on your social security card is correct, (c) Put that name and your SSN on the enclosed Form W-9 according to its instructions, sign it, and return it to us. No contact with SSA is necessary.
4. Both the last name and SSN on your account are different from the last name and SSN on your social security card _____.	4. (a) If the last name and SSN on your social security card are correct, put that name and SSN on the enclosed Form W-9 according to its instructions, sign it, and send it to us. No contact with SSA is necessary. (b) If the last name on your account and the SSN on your social security card are correct, follow the procedures in section 3(a) or (b) above. Be sure to put the name shown on your account and the SSN shown on your social security card on the Form W-9.

You must be consistent with the name and number (SSN) that you furnish (1) to us for all of your accounts and (2) to your other payors in order to avoid a problem in the future. If you must visit SSA, take this notice, your social security card, and other relevant documents with you. You should call SSA first so they can explain to you what other documents you need to bring to the SSA office.

Instructions for Nonindividuals

For most nonindividuals (such as trusts, estates, partnerships, and similar entities), the taxpayer identification number is the employer identification number (EIN). The EIN on your account may be incorrect because it does not contain the number of the actual owner of the account. For example, an account of an investment club or bowling league should reflect the organization's own EIN and name, rather than the SSN of a member. (The account of a sole proprietor who may have both an EIN and a SSN should reflect the individual name of the sole proprietor and his or her SSN.) Please put the name and EIN on the enclosed Form W-9, sign it, and send it to us.

Remember

YOU MUST SEND US A SIGNED FORM W-9 WITHIN 30 CALENDAR DAYS FROM THE DATE SHOWN AT THE TOP OF PAGE 1 even if the name and number (SSN or EIN) on your account with us match the name and number (SSN or EIN) on your social security card or the document issuing you an EIN. If we do not receive your Form W-9 and, if necessary, the statement that you contacted SSA or IRS within the 30-day period, we may be required to withhold 20% from any reportable payment that we pay to your account until we receive the necessary documents. Also, if you make a withdrawal from your account before the end of a 30-business-day period beginning from the date after the date of this notice and before we receive the necessary documents, we may be required to withhold 20% of reportable payments made to your account during such period.

Please complete the form below if you are required to contact SSA or the IRS.

Detach and Return to Us

Statement of SSA or IRS Contact

I hereby state that I have contacted the Social Security Administration concerning my social security number (SSN) or the

Internal Revenue Service concerning my employer identification number (EIN) to resolve the problem with my name or number which resulted in my being notified of an incorrect taxpayer identification number.

(Print name)

(Signature)
By
(For Nonindividuals and Agents Only)
Date
Account Number
Current TIN on Account
Current Name on Account

Par. 3. Section 34a.9999–1 is amended by adding a new sentence at the end of A–4, by adding two new sentences at the end of A–5, by adding a new heading and new Q/A–7A and Q/A–7B immediately after A–7, by adding a new sentence at the end of A–37, by revising the heading immediately before Q–42, by adding new Q/A–42A, a new heading and new Q/A–42B immediately after Q/A–42A, by adding a new sentence at the end of A–48, and by adding a new heading and a new Q/A–56 immediately after A–55 to read as follows:

§ 35a.9999–1 Questions and answers concerning the due diligence requirement and the certification requirements in connection with backup withholding and other related issues.

* * * * *

A–4. * * * See A–51 of § 35a.9999–3 for the general rule for the actions that a payor of an account or instrument that is not a pre-1984 account (as defined in A–34 of § 35a.9999–1 and A–20 of § 35a.9999–3) must take to exercise due diligence under section 6676(b).

* * * * *

A–5. * * * See A–7A of this section for the rule for nonseparate annual mailings. See A–56 of this section for the actions that payors who failed to exercise due diligence as described in A–5 and A–6 and the related questions and answers on due diligence under this section on all or part of their pre-1984 accounts or instruments may take to be relieved of the penalty otherwise due under section 6676(b).

* * * * *

Subsequent Year's Mailing

Q–7A. In order for a payor of reportable interest or dividend payments to be considered to have exercised due diligence in soliciting a taxpayer identification number of a payee with respect to a pre-1984 account or instrument, what information is the payor required to include in the subsequent year's mailing (nonseparate annual mailings) described in the fourth paragraph of A–5 of § 35a.9999–1 to a payee who has not provided the payor with a certification, under penalties of perjury, that his taxpayer identification number is correct?

A–7A. The payor is required to include (1) an appropriately modified copy of the notice described in A–7 of § 35a.9999–1, (2) a Form W–9 or acceptable substitute form for the payee to provide a correct taxpayer identification number, and (3) a reply envelope (self-addressed) for the payee to return the Form W–9 or acceptable substitute form. However, for those subsequent mailings described in A–5 or A–6 made before the 1988 calendar year, the mailings should, but are not required to, contain the reply envelope.

Q–7B. In order to be considered to have exercised due diligence in soliciting the payee's certified taxpayer identification number, by what date must the payor of reportable interest or dividends mail the subsequent year's mailing described in the fourth paragraph of A–5 and in A–7A of this section to a payee of a pre-1984 account who has not certified, under penalties of perjury, that his taxpayer identification number is correct?

A–7B. The payor may send the mailing at any time during each year that a nonseparate annual mailing is required, but in no event later than December 31 of such year. Section 7503 shall apply in determining the time for sending the subsequent year's mailing if December 31 falls on a Saturday, Sunday, or a legal holiday.

* * * * *

A–37. * * * See A–4 of § 35a.9999–1 and the answers under § 35a.9999–3 beginning with A–51 for the actions that a payor of an account or instrument that is not a pre-1984 account must take to exercise due diligence and thereby avoid a penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number.

* * * * *

Window Transactions Pre-1984 Instruments

* * * * *

Q–42A. Is a payor on a pre-1984 instrument in a window transaction subject to a penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number with respect to that transaction?

A–42A. No. However, see A–42 in this section which provides, in part, that a payor is required to backup withhold if a payee fails to provide a taxpayer identification number (*i.e.*, there is a missing taxpayer identification number). See A–66 of § 35a.9999–3 for the actions that payors of post-1983 window transactions, as defined in A–42B, must take to avoid a penalty under section 6676(b).

Post-1983 Instruments

Q–42B. Is a payor required to treat an instrument that is negotiated in a window transaction (as defined in A–42 of § 35a.9999–1 and A–9 of § 35a.9999–2) after December 23, 1987, as an instrument acquired after December 31, 1983?

A–42B. Yes. A window transaction occurring on or after December 23, 1987, will be considered made with respect to an instrument acquired after December 31, 1983, regardless of when the instrument was issued by the payor or acquired by the payee. See A–66 of § 35a.9999–3 for the actions that payors must take to avoid a penalty under section 6676(b) with respect to a post-1983 window transaction.

* * * * *

A–48. * * * See A–4 of § 35a.9999–1 and the answers under § 35a.9999–3 beginning with A–51 for the actions that a payor of an account or instrument that is not a pre-1984 account or instrument must take to exercise due diligence and thereby avoid a penalty under section 6676(b) or filing an information return with a missing or an incorrect taxpayer identification number.

* * * * *

Nonassessment of the Penalty by Administrative Discretion

Q–56. Is a payor of a pre-1984 account or instument who did not undertake the mailings in accordance with A–5 and A–6 and the related questions and answers on due diligence under this section liable for the penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number for all years in which the payor did not have a certified Form W–9 or acceptable substitute form from a payee?

A–56. Yes. The payor is liable for the penalty under section 6676(b) for each year the payor files an information return with a missing or an incorrect taxpayer identification number for a pre-1984 account or instrument if the payor has not exercised due diligence as described in A–5 and A–6 and in the related questions and answers on due diligence under this section or obtained a certified taxpayer identification number from the payee. However, in its administrative discretion the Internal Revenue Service will not impose the penalty on a payor for an information return filed for calendar years after 1987

if the payor makes or has made a separate mailing of the type described in A–5 and A–52 (as applicable under those Q and A's) on or before June 30, 1988, and makes or has made the nonseparate mailing described in A–5 and A–52 (as applicable under those Q and A's) in each year subsequent to the year of the separate mailing claimed as the basis for administrative relief. Such separate and nonseparate mailings must be made with respect to all pre-1984 accounts or instruments of payees who have not previously certified, under penalties of perjury, that the taxpayer identification number furnished to the payor is the payee's correct taxpayer identification number or established the payee's foreign status (under § 1.6049–5(b)(2)(iv) with respect to interest payments or under Q and A 36 of § 35a.9999–3 with respect to dividend payments). The rules described in A–5 and A–6 and the related questions and answers on due diligence under this section shall apply, as shall the rules described in A–8, A–9, A–10, A–11, A–12, A–14, A–15, and A–16. Further, the special rules in A–17, A–18, A–19, A–20, A–21, A–22, A–23, A–24, and A–25 also shall apply to the mailing described in A–56 of this section.

In order to receive administrative relief each year, a payor must make an affirmative showing to the satisfaction of the district director or the director of the Internal Revenue Service Center that the person otherwise liable for such penalty fulfilled the requirements of this paragraph. A payor will remain liable for any applicable penalties under section 6676(b) for years prior to 1988.

Par. 4. Section 35a.9999–2 is amended by adding a new sentence at the end of A–18 to read as follows:

§ 35a.9999–2 Questions and answers concerning due diligence and issues in connection with backup withholding.

* * * * *

A–18. * * * See A–56, A–57, A–58 and A–59 of § 35a.9999–3 for the actions that a payor must take to exercise due diligence after December 31, 1987, for an account with respect to which the payor received an awaiting–TIN certification to avoid a penalty under section 6676 (b) for filing an information return with a missing taxpayer identification number. Payors will remain liable for any applicable penalties under section 6676 for years prior to 1988.

* * * * *

Par. 5. Section 35a.9999–3 is amended by adding a new heading before A–51, by revising Q/A–51, by renumbering Q/A–52 as Q/A–104, and by adding new Q/A–52 through Q/A–103 immediately after Q/A–51 to read as follows:

§ 35a.9999–3 Questions and answers concerning backup withholding.

* * * * *

Due Diligence Defined for Accounts Opened and Instruments Acquired After December 31, 1983

Before Notification of an Incorrect TIN

Q–51. In order for a payor of a reportable interest or dividend payment (other than in a window transaction) to be considered to have exercised due diligence in furnishing the correct taxpayer identification number of a payee with respect to an account opened or an instrument acquired after December 31, 1983, what actions must the payor take?

A–51. In general, the payor of an account or instrument that is not a pre-1984 account (see A–34 of § 35a.9999–1 and A–20 of 35a.9999–3) nor a window transaction (as defined in A–42 of § 35a.9999–1 and A–9 of § 35a.9999–2) must use a taxpayer identification number provided by the payee under penalties of perjury on information returns filed with the Internal Revenue Service to satisfy the due diligence requirement. Therefore, if, after 1983, a payor permits a payee to open an acocunt without obtaining the payee's taxpayer identification number under penalties of perjury and files an information return with the Internal Revenue Service with a missing or an incorrect taxpayer identification number, the payor will be liable for the $50 penalty. Once notified by the Internal Revenue Service (or a broker) that a number is incorrect, a payor is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the payor has not exercised due diligence with respect to such years. See A–56 through A–70 of this section for the exceptions to due diligence. A pre-existing certified taxpayer identification number does not constitute an exercise of due diligence after the Internal Revenue Service or a broker notifies the payor that the number is incorrect if the Internal Revenue Service or a broker notifies the payor on or after January 1, 1988, unless the payor undertakes the actions specified in A–68 of this section.

Q–52. Is a payor as described in A–51 liable for the penalty if the payor obtained a certified taxpayer identification number from a payee but inadvertently processed the name or number incorrectly on the information return?

A–52. Yes. The payor is liable for the penalty unless the payor exercised that degree of care in processing the taxpayer identification number and name and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

Payors and Trustees of Certain Grantor Trusts

Q–53. Is a payor of reportable interest or dividend payments to a grantor trust that was established on or after January 1, 1984, and which has ten or fewer grantors, liable for the penalty under section 6676 (b) for filing an information return with a missing taxpayer identification number if the trustee could not provide a certified taxpayer identification number to the payor at the time the account was opened because each grantor had not furnished the trustee with a certified taxpayer identification number under penalties of perjury as provided under A–20 of § 35a.9999–2?

A–53. A payor of a post-1983 grantor trust which has ten or fewer grantors is liable for the penalty under section 6676 (b) for filing an information return with a missing taxpayer identification number unless the payor has exercised due diligence or comes within one of the exceptions to due diligence in this section. In general, a payor of a post-1983 grantor trust exercises due diligence by obtaining a certified taxpayer identification number from the payee (trust) as described in A–4 of § 35a.9999–1 and A–51 of this section.

Q–54. Under what circumstances is a grantor trust liable for a penalty under section 6676 (b) for filing an information return with a missing or an incorrect taxpayer identification number?

A–54. Only a grantor trust with 10 or more grantors is a payor and may be liable for a penalty under section 6676 (b) unless the trust has exercised due diligence as described in A–51 of this section or comes within an exception to the due diligence requirements.

Special Rules Under Q/A 28 of § 35a.9999–3

Q–55. Is a payor who obtains a taxpayer identification number pursuant to the special rule under A–28 of this section, relating to readily tradable instruments, liable for the penalty under section 6676 (b) for those years in which the payor filed an information return with an incorrect taxpayer identification number if the payor did not obtain a certified taxpayer identification number from the payee within the 30-day grace period provided in A–28 of this section?

A–55. Yes. A payor of a post–1983 account is liable for the penalty under

section 6676 (b) for filing an information return with an incorrect taxpayer identification number unless the payor has exercised due diligence. In general, a payor of a post–1983 account exercises due diligence by obtaining a certified taxpayer identification number from the payee as described in A–4 of § 35a.9999–1 and A–51 of this section. Thus, the payor described in Q–55 will be liable for the penalty for filing an information return with an incorrect taxpayer identification number if the payee did not provide the required certification to the payor within the 30-day period whether or not the payor backup withholds on the account. The rule described in this answer is effective with respect to information returns filed for the 1988 and subsequent calendar years.

Exceptions to Due Diligence

(1) Awaiting-TIN Certification

Q–56. In general, what actions must a payor who receives an awaiting-TIN certification prior to January 1, 1988 (a "pre–1988 awaiting-TIN certification"), take to be considered to have exercised due diligence?

A–56. In general, a payor with respect to an account or instrument that is not a pre–1984 account, instrument or relationship nor a window transaction will be considered to have exercised due diligence if the payee has complied with the requirements of A–18 of § 35a.9999–2 (exception for a payee who is waiting for receipt of a taxpayer identification number) prior to January 1, 1988, provided that the payor imposes backup withholding if the payee fails to provide a taxpayer identification number in the manner and within the period required by A–18 of § 35a.9999–2. This provision applies only with respect to information returns filed for calendar years before 1988.

Q–57. Is a payor who receives an awaiting-TIN certification before January 1, 1988, liable for the penalty under section 6676 (b) for filing an information return with a missing taxpayer identification number for the 1988 or a later calendar year?

A–57. A payor who receives a pre–1988 awaiting-TIN certification for an account of a payee and files an information return with a missing taxpayer identification number for the 1988 or a later calendar year with respect to that account will be subject to the penalty under section 6676 (b) unless the payor continues to exercise due diligence by undertaking additional actions described in A–58 below to solicit the payee's taxpayer identification number.

Q–58. What actions must a payor with a pre–1988 awaiting-TIN certification take in order to exercise due diligence after December 31, 1987, so that the payor will not be subject to a $50 penalty for filing an information return with a missing taxpayer identification number for a calendar year after 1987?

A–58. A payor with a pre–1988 awaiting-TIN certification may exercise due diligence after December 31, 1987, by: (1) Continuing to backup withhold on the account, instrument, or relationship until a certified taxpayer identification number is received, (2) sending a mailing before December 31 of each year after 1987, requesting the certified taxpayer identification number from a payee who has not by that time provided a certified TIN, and (3) including a Form W–9 or acceptable substitute form in the mailing for the payee to provide his certified taxpayer identification number. The payor must include a reply envelope (self-addressed) in the mailing. The envelope sent to the payee must contain the following statement in a bold and conspicuous manner: "Important Tax Document Enclosed." The payor may include other information in the mailing. The payor must continue to backup withhold and send the mailing each year until the payor receives a certified taxpayer identification number from the payee or until the account is closed.

Q–59. What actions must a payor take in order to exercise due diligence on an account, instrument or relationship for which the payor receives an awaiting-TIN certification after December 31, 1987 (a "post–1987 awaiting-TIN certification")?

A–59. In order to exercise due diligence a payor who receives a post-1987 awaiting-TIN certification from a payee must: (1) Obtain a certified taxpayer identification number from the payee within 60 days after the date that the payor receives the awaiting-TIN certification, and (2) backup withhold on any withdrawals made after the close of 7 business days after the date the awaiting-TIN certification is received and before the earlier of (i) the date that the payor receives a certified taxpayer identification number from the payee, (ii) the date the account is closed, or (iii) the date backup withholding commences on all reportable payments made to the account, instrument, or relationship. For purposes of subsection (ii) in this A–59, a payor is also required to backup withhold on any reportable payment made at the time the account or relationship is closed. For purposes of subsection (2) in this A–59, all cash withdrawals in an amount up to the reportable payments made from the day after the date of receipt of the awaiting-TIN certification to the date of withdrawal are treated as reportable payments. Thus, a payor who receives a post-1987 awaiting-TIN certification from a payee who does not provide the payor with a certified taxpayer identification number within the 60 days described in A–18 of § 35a.9999–2 is liable for the penalty if reportable payments are paid to the account after the 60 days and the payor files an information return with respect to the account with a missing taxpayer identification number. The payor is liable for the penalty whether or not the payor backup withholds on the reportable payments made after the 60-day period.

(2) Instruments Acquired From a Broker

Q–60. Under what circumstances will a payor whose readily tradable instrument was acquired by a payee through a broker be considered to have exercised due diligence?

A–60. Generally, a payor will be considered to have exercised due diligence with respect to a readily tradable instrument that was acquired by the payee through a post-1983 brokerage account as described in A–41 of § 35a.9999–1 if the payor uses a taxpayer identification number furnished by a broker. In addition, to exercise due diligence a payor must use the same care in processing the taxpayer identification number and name provided by the broker that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. A taxpayer identification number acquired from a broker as described in this A–60 will not constitute an exercise of due diligence after the Internal Revenue Service or a broker notifies the payor that the number is incorrect unless the payor undertakes the actions specified in A–88 of this section.

Q–61. Is the payor in A–60 liable for the penalty if the payor obtained the taxpayer identification number and name from a broker but inadvertently processed the number or name incorrectly and thus put an incorrect number on the information return?

A–61. Yes. The payor is liable for the penalty unless the payor exercised that degree of care in processing the certified taxpayer identification number and name and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

Q-62. What actions must a payor who was notified by a broker that a payee failed to certify or furnish a taxpayer identification number take to be considered to have exercised due diligence?

A-62. A payor who is notified by a broker that a payee failed to certify or furnish a taxpayer identification number to the broker will be considered to have exercised due diligence if the payor: (1) Imposes backup withholding if the payee did not certify his taxpayer identification number to the payor, (2) provides notice to the payee as provided in A-39 of § 35a.9999-1 and A-18 of § 35a.9999-2, and (3) encloses a postage-paid reply envelope (self-addressed) in the mailing of the notice. A payor described in this A-62 will be liable for the penalty under section 6676(b) for filing an information return with a missing taxpayer identification number for the 1988 or subsequent calendar years unless the payor complies with the procedures described in this A-62 in each such calendar year until the payor receives a certified taxpayer identification number form the payee or until the account is closed. For years prior to 1988, no penalty will be imposed on a payor who has complied with the requirements in this A-62 in the year the payor was notified by a broker.

A payor as described in this A-62 who receives a noncertified taxpayer identification number from a broker may be liable for the penalty under section 6676(b) for the 1988 or subsequent calendar years with respect to which the number provided by a payor on an information return filed with the Internal Revenue Service is determined to be incorrect unless the payor complies with the procedures described in this A-62 in each such calendar year until the payor receives a certified taxpayer identification number from the payee, the account is closed, or the payor undertakes the actions described in A-88 of this section after being notified of the incorrect taxpayer identification number.

(3) Instruments Transferred Without the Assistance of a Broker

Q-63. With respect to an instrument transferred without the assistance of a broker, is a payor liable for the penalty under section 6676(b) if the payor records on its books a transfer of a readily tradable instrument in a transaction in which the payor was not a party?

A-63. Generally, a payor as described in Q-63 will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the payor if the payor records on its books a transfer in which the payor was not a party. This exception applies until the calendar year in which the payor receives a certified taxpayer identification number from the payee.

Q-64. Is the payor described in A-63 required to solicit the taxpayer identification number of a payee of an account with a missing TIN in order to be considered as having exercised due diligence in a subsequent calendar year?

A-64. There is no requirement on the payor to solicit the taxpayer identification number in order to be considered to have exercised due diligence in a subsequent calendar year under the rule set forth in A-63.

Q-65. Is a payor as described in Q-63 considered to have exercised due diligence if the payee provides a taxpayer identification number to the payor (whether or not certified), the payor uses that number on the information return filed for the payee, and the number is later detemined to be incorrect?

A-65. A payor as described in Q-63 who records on its books a transfer in which it was not a party is considered to have exercised due diligence under the rule set forth in A-63 where the transfer is accompanied with a taxpayer identification number provided that the payor uses the same care in processing the taxpayer identification number provided by a payee that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. Thus, a payor will not be liable for the penalty if the payor uses the taxpayer identification number provided by the payee on information returns that it files, even if the taxpayer identification number provided by the payee is later determined to be incorrect. However, a payor will not be considered as having exercised due diligence under A-63 after the Internal Revenue Service or a broker notifies the payor that the number is incorrect unless the payor undertakes the actions described in A-88 of this section.

(4) Window Transactions

Q-66. What action must a payor of a post-1983 window transaction (as defined in A-42 and A-42B of § 35a.9999-1 and A-9 of § 35a.9999-2) take to be considered as having exercised due diligence?

A-66. A payor of a post-1983 window transaction shall be considered to have exercised due diligence only if the payor uses the taxpayer identification number provided by the payee on information returns filed with the Internal Revenue Service. If no number is provided, the payor will not be considered to have exercised due diligence.

(5) Undue hardship

Q-67. Is a payor liable for a penalty under section 6676(b) with respect to a post-1983 account or instrument if the payor could have met the due diligence requirements but for the fact that the payor incurred an undue hardship?

A-67. A payor of a post-1983 account or instrument is not liable for a penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number if the Internal Revenue Service determines that the payor could have satisfied the due diligence requirements but for the fact that the payor incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the payor by fire or other casualty (or the place of business of the payor's agent who under a pre-existing written contract had agreed to fulfill the payor's due diligence obligations under section 6676(b) with respect to the account subject to the penalty and there was no means for the obligations to be performed by another agent or the payor). Undue hardship will also be found to exist if the payor could have met the due diligence requirements only by incurring an extraordinary cost.

Q-68. How does a payor obtain a determination from the Internal Revenue Service that the payor has met the undue hardship exception to the penalty under section 6676(b) for the year with respect to which the payor is subject to the penalty?

A-68. A determination of undue hardship may be established only by submitting a written statement to the Internal Revenue Service signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the payor could have satisfied the due diligence requirements but for the occurrnece of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the payor either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A payor may request an undue hardship determination from the district director or the director of the Internal Revenue Service Center where the payor is required to remit the penalty under section 6676(b).

(6) Error in Agency Records

Q–69. Is a payor liable for the penalty under section 6676(b) if the taxpayer identification numnber is incorrect as a result of an intrinsic error in the number records of the Social Security Administration or Internal Revenue Service?

A–69. Generally, a payor will not be liable for a penalty under section 6676(b) if a taxpayer identification number is determined to be incorrect as a result of an intrinsic error in the records of the Social Security Administration or the Internal Revenue Service (for instance, because the records of such agencies in the normal course of business should be, but are not, up-to-date at the time the Internal Revenue service makes a determination that a taxpayer identification number is incorrect). The records of the Social Security Administration or the Internal Revenue Service will not be treated as in error if the records contain the name and taxpayer identification number of a person (or business) who subsequently changes his or her name (or business name) and does not communicate the change of name to the Social Security Administration or the Internal Revenue Service before the Internal Revenue Service determines that the taxpayer identification number is incorrect. The burden of proof will be on the payor to substantiate that the records of the Social Security Administration or the Internal Revenue Service are in error. A photocopy of the payee's social security card or the document provided by the Internal Revenue Service issuing the payee's employer identification number (that contains identical information to that on the information return with respect to which the penalty may be imposed) will be sufficient proof to come within this exception.

(7) Exempt Recipients

Q–70. Is a payor liable for the penalty under section 6676(b) if the payor files an information return with a missing or an incorrect taxpayer identification number for an exempt recipient whom the payor determined was exempt at the time of the payment pursuant to the rules under A–29 of § 35a.9999–1?

A–70. A payor is not liable for the penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number if the payee is exempt from information reporting under the applicable information reporting provisions of the Internal Revenue Code.

Circumstances Where Due Diligence is Not Shown

Both Pre-1984 and Post-1983 Accounts and Instruments

Q–71. Is a payor liable for the penalty under section 6676(b) if, after the due date of an information return (including extensions of time for filing), the payor files a corrected information return that contains the correct taxpayer identification number?

A–71. Yes. The payor is still liable for the penalty under section 6676(b) for filing an information return with an incorrect or a missing taxpayer identification number. The payor is not liable for the penalty, however, if the payor files a corrected information return with the correct taxpayer identification number before the due date of the return with regard to extensions.

Q–72. Is a payor liable for the penalty under section 6676(b) if the payor has been assessed (or has self-assessed) a $5 penalty under section 6723(a) for the failure to put correct information (which may include an incorrect taxpayer identification number) on an information return?

A–72. Yes. The payor is liable for the penalty under section 6676(b) if the payor files an information return with a missing or an incorrect taxpayer identification number without exercising due diligence, coming within one of the exceptions to due diligence, or coming within the rule described in A–56 of this section, whether or not the payor is liable for or has been assessed the penalty under section 6723(a) with respect to the information return. To the extent that a penalty under sections 6723(a) and 6676(b) is assessed with respect to the same information return, the payor should file for a refund of the penalty under section 6723(a). Thus, with respect to the failure to include the correct taxpayer identification number (a missing or an incorrect taxpayer identification number) on an information return, the provisions under section 6676(b) shall apply and not the provisions under section 6723(a). If the penalty for the intentional failure to include the correct taxpayer identification number on an information return under section 6723(b) is assessed, no penalty shall be assessed under section 6676(b).

Q–73. Is a payor who is not exercising due diligence liable for the penalty under section 6676(b) if the taxpayer identification number is determined to be incorrect because the payor (or his agent) improperly prepared or formatted the information return?

A–73. Yes. A payor who is not satisfying all the due diligence requirements for the account in question is liable for a penalty under section 6676(b) if the taxpayer identification number is determined to be missing or incorrect due to a human, clerical, or processing error on the part of the payor (or the payor's agent) in preparing or formatting the information return. In general, a payor (or his agent) will not be considered to have erroneously prepared or formatted an information return if the payor (or his agent) has complied with all pertinent income tax regulations, revenue rulings, and procedures in effect with respect to information returns.

Revised Due Diligence Standards for Transactions With Foreign Persons

Q–74. What actions must a payor or broker of a pre-1984 account or instrument take to establish due diligence with respect to the penalty under section 6676(b) for filing an information return with a missing taxpayer identification number for the 1984 and subsequent calendar years if payment on the account would not have been a reportable payment under section 6045 or 6049 but for the fact that the foreign person failed to provide the prescribed penalty of perjury statement under § 1.6045–1(g)(1) or under § 1.6049–5(b)(2) (iv) of the Income Tax Regulations?

A–74. The payor or broker will be considered to have exercised due diligence on the account, if—

(1) The payor or broker sent the separate and nonseparate annual mailings to the payee as described in A–5 and A–6 and in the related questions and answers on due diligence in § 35a.9999–1 and imposed backup withholding on the account beginning on January 1, 1984 (or, alternatively, imposed backup withholding under A–18 of § 35a.9999–2 on payments made on or after January 16, 1984), until the taxpayer identification number is received from the payee, or

(2) The payor or broker sent a separate mailing as described in A–52 or A–55 of § 35a.9999–1 to the payee requesting the required penalty of perjury statement (provided that the payor or broker has evidence in its records that the payee is a foreign person and provided that the payor or broker has no actual knowledge that such evidence is false), commenced backup withholding on payments made on or after July 1, 1984, and sends a nonseparate mailing by December 31 of the 1987 calendar year and each calendar year thereafter until the

required penalty of perjury statement is received from the payee, or

(3) The payor or broker sent a mailing as described in A–52 or A–55 of § 35a.9999–1 to the payee requesting the required penalty of perjury statement (provided that the payor or broker has evidence in its records that the payee is a foreign person and has no actual knowledge that such evidence is false), imposed backup withholding on payments made on or after January 1, 1985, and sent an additional mailing as described in A–3 of § 35a.9999–4 during the 1984 and 1987 calendar years and each calendar year thereafter, until the payor or broker receives the required penalty of perjury statement.

Q–75. What actions must a payor or broker of a post-1983 account or instrument take to establish due diligence with respect to the penalty under section 6676(b) for filing an information return with a missing taxpayer identification number for the 1984 and subsequent calendar years when payment on the account would not have been a reportable payment under Code section 6045 or 6049 but for the fact that the foreign person failed to provide any prescribed penalty of perjury statement under § 1.6045–1(g)(1) or under § 1.6049–5(b)(2)(iv) of the Income Tax Regulations?

A–75. Generally, payor or broker will be treated as having satisfied the due diligence requirements with respect to post-1983 account or instrument if at the time the account or instrument was opened or acquired the payor or broker obtained a certified taxpayer identification number from the payee and used that number on the information return that was filed for the particular calendar year that is subject to the penalty. See A–51 of this section for the due diligence requirements for payors of accounts or instruments that are not pre-1984 accounts or instruments.

Q–76. What actions must a payor or broker take to exercise due diligence with respect to an account for which a Form W–8 is no longer in effect so that the payor or broker is not liable for the penalty for filing an information return with a missing taxpayer identification number?

A–76. A payor or broker of a pre-1984 or a post-1983 account or instrument that becomes subject to information reporting because of Form W–8 is no longer in effect may exercise due diligence with respect to such account by (1) sending a separate mailing to the payee before January 1 of the first calendar year that a Form W–8 is no longer in effect (and during which a Form W–9 or its acceptable substitute has not been received) and before December 31 of each such calendar year thereafter requesting the required penalty of perjury statement (Form W–8), and (2) imposing backup withholding on reportable payments made on the account during a year that a Form W–8 is not in effect (and during which a Form W–9 or its acceptable substitute has not been received). (For Forms W–8 that expired in the 1986 calendar year, the payor may make one separate mailing that will satisfy the mailing requirement for both the 1986 and 1987 calendar years. This separate mailing must be made on or before June 30, 1988.) The mailing must be by first-class mail, or airmail if sent to a foreign address, and must contain the Form W–8 and a notice describing the Form W–8 and advising the payee that backup withholding may commence (or has commenced) because the form is not provided. The payor must also include a reply envelope (self-addressed) in the mailing. The rules of A–18 and A–19 shall apply to this rule provided in this A–76.

Clarification of the Due Diligence Standard Prior to Being Notified by the Internal Revenue Service That a Number is Incorrect

Pre-1984 Accounts and Instruments

Q–77. What action must a payor of reportable interest or dividends on a pre-1984 account or instrument take to exercise due diligence so that the payor is not liable for the penalty under section 6676(b) for filing an information return with an incorrect taxpayer identification number?

A–77. A payor of reportable interest or dividends on a pre-1984 account or instrument will be considered to have exercised due diligence in furnishing a taxpayer identification number with respect to a particular calendar year if in such year the payor (1) has made the prescribed yearly mailings as described in A–5 and A–6 and in the related questions and answers on due diligence in § 35a.9999–1 with respect to such account or instrument, or (2) obtained a certified taxpayer identification number from the payee. In addition, to be considered to have exercised due diligence the payor must have used the same care in processing the taxpayer identification number provided by the payee and in furnishing that taxpayer identification number on the information return that is filed for the year that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. However, see A–56 of § 35a.9999–1 for the circumstances under which the penalty will not be imposed through administrative discretion with respect to information returns filed for the 1988 or subsequent calendar years.

Q–78. Will a payor who filed an information return with an incorrect taxpayer identification number be considered to have exercised due diligence for a particular calendar year with respect to a pre-1984 account or instrument for which the payor did not have a certified taxpayer identification number if, in such calendar year, the payor undertook a mailing as described in A–5 and A–6 and in the related questions and answers on due diligence in § 35a.9999–1 but failed to undertake one or more of the mailings required under A–5 or A–6 of § 35a.9999–1 in an earlier year?

A–78. No. The annual solicitation of the correct taxpayer identification number for a pre-1984 account or instrument is a cumulative requirement. Thus, if the separate mailing or one of the nonseparate annual mailings described under A–5 or A–6 of § 35a.9999–1, respectively, is not undertaken or is undertaken improperly, the payor can never demonstrate due diligence for the particular account or instrument in question through solicitation of the taxpayer identification number. Therefore, the payee is liable for the penalty under section 6676(b) with respect to the year in which the payor failed to make a mailing or makes a mailing improperly and all subsequent years (regardless of whether a mailing is made in a subsequent year) in which a return is filed with an incorrect taxpayer identification number. See A–56 of § 35a.9999–1 for the circumstances under which the penalty will not be imposed through the administrative discretion of the Internal Revenue Service with respect to information returns filed for the 1988 or subsequent calendar years.

Q–79. Can a payor of reportable interest or dividends ever establish due diligence for a pre-1984 account or instrument if the payor missed one of the prescribed annual mailings or if one of the mailings was not undertaken in accordance with A–5 and A–6 and in accordance with the related questions and answers on due diligence described in § 35a.9999–1?

A–79. The payor of a pre-1984 account or instrument who failed to undertake one or more of the annual mailings as described in A–5 and A–6 and in the related questions and answers on due diligence described in § 35a.9999–1 (or undertook those mailings improperly) can establish due diligence by obtaining a certified taxpayer identification from

the payee and using that number on the information return. Due diligence will be considered as exercised beginning in the calendar year in which the certified number is received and used on the information return filed for that year. Also, see A–56 of § 35a.9999–1 for the circumstances under which the penalty will not be imposed through the administrative discretion of the Internal Revenue Service.

Q–80. Does a payor who subsequently obtains a certified taxpayer identification number or a Form W–8 on a pre-1984 account or instrument remain liable for the penalty for filing an information return with an incorrect or a missing taxpayer identification number in prior years if the payor did not exercise due diligence in such years by the prescribed mailings, by obtaining a certified taxpayer identification number, or by obtaining a Form W–8 signed under penalties of perjury?

A–80. Yes. Obtaining a certified taxpayer identification number on a pre-1984 account or instrument may be considered an exercise of due diligence only for the year in which the certified number is received and subsequent calendar years.

Q–81. Does the answer in A–80 change with respect to a calendar year if the payor subsequently obtains a certified number from a payee that matches the number used by the payor on a previous information return filed for such year?

A–81. No. The payor remains liable for the penalty for those calendar years with respect to which the payor filed an information return with an incorrect taxpayer identification number without exercising due diligence in such year. The question of whether a payor has exercised due diligence is a year-by-year determination. Due diligence must be exercised in the particular year for which the payor is subject to the penalty.

Q–82. Is a payor of a pre-1984 account or instrument who obtained a noncertified taxpayer identification number from a payee liable for the penalty if the payor undertook all the prescribed annual mailings but inadvertently processed the name or taxpayer identification number incorrectly on the information return?

A–82. Yes. The payor is liable for the penalty unless the payor can show that the payor exercised that degree of care in processing the name and taxpayer identification number and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

Q–83. Is a payor of a pre-1984 account or instrument who has a certified taxpayer identification number from a payee liable for the penalty if the payor inadvertently processed the name or taxpayer identification number incorrectly on the information return?

A–83. Yes. The payor is liable for the penalty unless the payor can show that the payor exercised that degree of care in processing the name and taxpayer identification number and in furnishing it on the information return that a reasonably prudent payor would use in handling account information, such as account numbers and balances.

Due Diligence Defined After Notification by the Internal Revenue Service That a Taxpayer Identification Number is Incorrect

In General

Q–84. Is a payor of a reportable interest or dividend payment liable for the penalty under section 6676(b) in 1989 and subsequent calendar years if the Internal Revenue Service or a broker notifies the payor on or after January 1, 1988, and before the original due date of an information return that a payee's taxpayer identification number is incorrect, and the payor later provides that number on an information return?

A–84. Yes. A payor will be liable for the penalty under section 6676(b) for providing an incorrect taxpayer identification number on an information return for the 1988 and subsequent calendar years if the payor is notified by the Internal Revenue Service on or after January 1, 1988, and before the original due date of an information return that such number is incorrect, unless the payor is exercising due diligence.

Pre-1984 Accounts and Instruments

Q–85. What actions must a payor of a pre-1984 account or instrument take to exercise due diligence to avoid the penalty under section 6676(b) for filing an information return with an incorrect taxpayer indetification number for the 1988 and subsequent calendar years, if the Internal Revenue Service or a broker notifies the payor, on or after January 1, 1988, and before the original due date of such information return, that the payee's taxpayer identification number is incorrect?

A–85. A payor of a pre-1984 account or instrument will not be liable for the penalty if (1) at the time that the payor receives the first notice of an incorrect taxpayer identification number on or after January 1, 1988, the payor is considered to be exercising due diligence as described in A–5 and A–6 and the related questions and answers on due diligence under § 35a.9999–1 or is complying or with the rule described in A–56 and the related questions and answers on due diligence under § 35a.9999–1, (2) the payor sent the notice to the payee in the manner prescribed in § 35a.3406–1(c), (3) if the payor received a Form W–9 or acceptable substitute Form W–9 (including a recertified taxpayer identification number) from the payee before the original due date of an information return (see A–31 under § 35a.9999–1 and § 35a.3406–1(d)(2) as to when a payor may treat a Form W–9 or substitute Form W–9 as being received), the payor used the new name and taxpayer number provided on the Form W–9 or acceptable substitute form on information returns filed after the calendar year in which the number is received, and (4) the payor sends the notice prescribed in § 35a.3406–1(c) in each year subsequent to the year in which the notice was first sent to the payee (who has not by the end of such year provided a certified Form W–9 or acceptable substitute form) until the Internal Revenue Service or a broker sends a second notice (of an incorrect taxpayer identification number for the payee) to the payor within 3 calendar years. If a second notice is sent, due diligence is met according to the rules set forth in A–89 of this section.

Q–86. Is a payor of a pre-1984 account or instrument who is considered to be exercising due diligence through the prescribed annual mailings in A–5 and A–6 (or who is undertaking the actions described in A–56 of § 35a.9999–1) and through the related questions and answers on due diligence under § 35a.999–1 in the year that the Internal Revenue Service notifies the payor of an incorrect taxpayer identification number required to undertake those mailings in addition to mailing the notice required in § 35a.3406–1(c) (or in § 35a.3406–1(f)(2) in the case of the notification of two incorrect taxpayer identification numbers in 3 calendar years)?

A–86. No. A payor of a pre-1984 account or instrument is not required to undertake the mailings prescribed in A–5 and A–6 of § 35a.9999–1 (or A–56 of § 35a.9999–1) in any year in which the payor is also required to send the notice prescribed in § 35a.3406–1(c) (or in § 35a.3406–1(f)(2)). Thus, for example, assume that Payor X pays reportable interest on a pre-1984 account and has undertaken all the prescribed mailings in A–5 and A–6 by December 31, 1988, for the account of Payee A. Also assume that payor X filed the calendar year 1984 return on February 28, 1985, with respect to Payee A with an incorrect taxpayer

identification number and the 1985, 1986, and 1987 calendar year information returns on February 28, 1986, March 2, 1987, and February 29, 1988, respectively, with the same incorrect taxpayer identification number. Payor X has not filed a Form 8210 for any of these years to remit the penalty under section 6676(b). In November of 1988 the Internal Revenue Service notifies Payor X that the number set forth on the 1986 calendar year information return (*i.e.*, filed in 1987 with respect to Payee A) was filed with an incorrect taxpayer identification number. Under these facts, Payor X is not liable for the penalty for filing the 1986 information return with an incorrect taxpayer identification number because (1) Payor X filed the information return before being notified by the Internal Revenue Service of the incorrect taxpayer identification number, and (2) Payor X exercised due diligence in 1986 through the prescribed annual mailing (*i.e.*, Payor X made the separate mailing in 1983 and the nonseparate mailings in 1984, 1985, and 1986 with respect to Payee A).

Similarly, Payor X is not liable for the penalty for the 1984, 1985, and 1987 calendar year information returns filed on February 28, 1985, February 28, 1986, and February 29, 1988, respectively.

Payor X will be liable for the penalty, however, for filing the 1988 calendar year information return with the same incorrect taxpayer identification number (*i.e.*, the number that the Internal Revenue Service notified was incorrect) unless Payor X (1) sends the notice information as described in § 35a.3406–1(c), and (2) uses the certified taxpayer identification number that is furnished by the payee, if one is received before the end of 1988, on the information return that is filed for the 1988 calendar year. If Payor X sends the notice described in § 35a.3406–1(c) in the 1988 calendar year, Payor X is not also required to send the mailing described in A–5 and A–6 (or A–56) of § 35a.9999–1 in 1988. If the payee does not provide a new taxpayer identification number to the payor, the payor must continue to use the existing taxpayer identification number on information returns filed for such payee.

Q–87. Is Payor X in the example in A–86 required to send the notice to Payee A described in § 35a.3406–1 (c) if, earlier in the year, Payor X sent the 1988 annual mailing to Payee A as described in A–5 and A–6 of (or A–56) § 35a.9999–1?

A–87. Yes. Once a payor is notified of an incorrect taxpayer identification number, the payor must send the mailing prescribed in § 35a.3406–1 (c) in or to continue exercising due diligence.

Post-1983 Accounts or Instruments

Q–88. What actions must a payor of a post-1983 account or instrument take to exercise due diligence so as to avoid the penalty for filing an information return with an incorrect taxpayer identification number after being notified by the Internal Revenue Service or a broker on or after January 1, 1988, and before the original due date of such return that the number is incorrect?

A–88. A payor as described in Q–88 of an account or instrument that is a post-1983 account or instrument will not be liable for the penalty for filing an information return with an incorrect taxpayer identification number after the Internal Revenue Service notifies the payor that the number is incorrect if (1) the payor is considered to be exercising due diligence at the time of the notice from the Internal Revenue Service because the payor has a certified taxpayer identification number from the payee or comes within one of the exceptions to due diligence, (2) the payor sent the notice in the manner prescribed in § 35a.3406–1(c), and (3) if the payor received a new certified Form W–9 or acceptable substitute form (which may contain a recertified taxpayer identification number) from the payee in a calendar year prior to the calendar year that is the original due date of an information return, the payor used the new name and taxpayer identification number provided on the Form W–9 or acceptable substitute form on information returns filed after the calendar year in which the taxpayer identification number is received. (See A–31 under § 35a.9999–1 and § 35a.3406–1(d)(2)(ii) as to when a payor may treat a taxpayer identification number as being received.)

In order to continue the exercise of due diligence, the payor must send the notice as described in § 35a.3406–1(c) in each calendar year until the payor obtains a certified taxpayer identification number from the payee or until the Internal Revenue Service sends a second notice (of an incorrect number for the payee) to the payor within 3 calendar years with respect to the account in question in which case due diligence is met according to the rules set forth in A–89 of this section.

Due Diligence Defined After Two Notifications of an Incorrect Taxpayer Identification Number Within 3 Calendar Years

Both Pre-1984 and Post-1983 Accounts and Instruments

Q–89. What actions must a payor take, if the payor is notified twice within 3 calendar years that a payee has provided an incorrect taxpayer identification number, to exercise due diligence so that the payor will not be subject to the penalty for the continued use of that incorrect taxpayer identification number?

A–89. The payor (1) must send the notice to the payee as prescribed in § 35a.3406–1(f)(2), (2) must code all subsequent information returns that are filed in the calendar year after the calendar year in which the second notice is received with the words "2ND NOTICE", and (3) must, if the payor receives a new name and taxpayer identification number with respect to the payee from the Internal Revenue Service as described in paragraph (g) of § 35a.3406–1, use that name and taxpayer identification number on the information returns that are filed after the calendar year in which the name and number are received. The manner in which the words "2ND NOTICE" should be set forth on the information return will be provided in a revenue procedure issued by the Internal Revenue Service. A payor shall not count any notice received from the Internal Revenue Service or a broker prior to January 1, 1990, as the second of two notices within 3 calendar years. Further, a payor shall treat two or more notices received in a calendar year with respect to the same payee as one notice received in that calendar year for that payee. The preceding sentence applies only with respect to a payor who receives such two or more notices under the same Employer Identification Number. See § 35a.3406–1(f).

Procedural Items

Q–90. In what year does the liability for the penalty under section 6676(b) arise?

A–90. The liability for the penalty arises on the day following the date that the payor files an information return with an incorrect (or a missing taxpayer identification number) with respect to a calendar year in which the payor failed to exercise due diligence.

Q–91. When must the payor remit the penalty to the Internal Revenue Service?

A–91. The penalty is due by April 1 of the year following the calendar year for which the information return is filed.

Q–92. Will interest accrue on the penalty if it is not timely paid?

A–92. Yes. The interest rate will be determined pursuant to section 6621 of the Internal Revenue Code. For example, assume Bank Y is notified by the Internal Revenue Service in November 1986 that Y filed 1500 information returns with respect to the 1984 calendar year with incorrect taxpayer

identification numbers. Y exercised due diligence in 1984 on 1,000 of the accounts for which Y filed information returns with incorrect taxpayer identification numbers. As a result, Y is liable for a $25,000 penalty (500×$50) with respect to the information returns filed for the 1984 calendar year. Further, interest will be charged on the $25,000 beginning April 1, 1985. To the extent Y filed information returns for the calendar year 1985 (or a later calendar year) with those same incorrect taxpayer identification numbers, Y may also be liable for a penalty and interest beginning on April 1, 1986 (or April 1 of the year following such later calendar year), with respect to such information returns.

Q–93. In what manner should a payor remit the penalty to the Internal Revenue Service?

A–93. Generally, the payor shall remit the penalty with a properly executed Form 8210. However, effective for information returns filed for the 1984 and 1985 calendar years with missing or incorrect taxpayer identification numbers, the payor may remit the penalty only with the certification statement set forth in CP 2100 and letter 2137 provided by the Internal Revenue Service for notifying payors of missing or incorrect taxpayer identification numbers. The submission to the Internal Revenue Service of the signed certification statement shall constitute the filing of a return. With respect to information returns filed with missing or incorrect taxpayer identification numbers for the 1986 or a later calendar year, the payor must remit the penalty with the Form 8210.

Q–94. What method should the payor use to contest any part of the proposed penalty under section 6676(b)?

A–94. A payor may contest the penalty judicially and administratively. With respect to a judicial contest, each penalty with respect to a return or statement is separable; therefore, a payor may contest its liability for the penalty by paying one such penalty and suing for a refund in a case in which the same issue arises with respect to multiple failures. A payor may also request an administrative appeals conference with the Internal Revenue Service. A request for an appeals conference may be made and granted after the penalty has been imposed by the Internal Revenue Service. The manner for requesting an appeals conference is set forth in Publication 556.

Q–95. When does the period for the statute of limitations on assessment begin to run on the penalty under section 6676(b)?

A–95. The period for the statute of limitations on assessment begins to run on a penalty that is due under section 6676(b) on the date the payor files the respective Form 8210 or, with respect to the penalty due for the 1984 and 1985 calendar year information returns, the earlier of the date the payor files the Form 8210 or files the certification statement set forth in CP 2100 and Letter 2137. The period for the statute of limitations on assessment runs for a period of 3 years. See section 6501.

Q–96. May a payor surcharge or pass the penalty on to the account of the payee with respect to which the payor was liable for the penalty under section 6676(b)?

A–96. No. A payor shall not surcharge or otherwise pass the penalty on directly or indirectly to the account of a particular payee. Section 6676 provides for a separate $50 penalty for a payee who fails to provide a correct taxpayer identification number to a payor.

Miscellaneous Items

Q–97. Is a payor of a pre-1984 account or instrument who does not undertake the prescribed mailings in A–5 and A–6 of (or A–56) § 35a.9999–1 but obtained a certified taxpayer indentification number from a payee required to retain a copy of the document containing the certified number in its files?

A–97. Yes. A payor of a pre-1984 account or instrument who does not undertake the prescribed mailings under A–5 or A–6 (or A–56) of § 35a.9999–1 is required to maintain a copy of the document containing the certified number in its files in the same manner and for the same period of time that the payor retains other account-creation or instrument-purchase documents.

Q–98. If a payor is notified that a payee is subject to backup withholding under both section 3406(a)(1) (B) and (C), with which rules should the payor comply and subject the payee to backup withholding?

A–98. A payor should comply with both provisions. Certain reportable payments that are subject to backup withholding under section 3406 (a)(1)(B) are not subject to backup withholding under section 3406(a)(1)(C). In a case where a reportable payment, such as interest reportable under section 6049, is potentially subject to backup withholding under both provisions, the payor must comply with the notice requirements under both section 3406(A)(1) (B) and (C). The payor should stop backup withholding on the account only when all conditions subjecting the account to backup withholding have been satisfied by the payee. Backup withholding should be stopped according to the provision that applies last to the account in question.

Acquisitions and Mergers

Q–99. Under what circumstance is a taxpayer liable for the penalty under section 6676(b) with respect to another taxpayer?

A–99. A taxpayer will be liable for the penalty under section 6676(b) of another taxpayer if there is a validly enforceable agreement under State law by which the taxpayer agreed to pay the Federal tax liability of the other taxpayer or has guaranteed the payment of such taxpayer's tax liabilities. Alternatively, the penalty may be collectible from the taxpayer as a transferee of property of the other taxpayer pursuant to section 6901 if the liability arises on the liquidation of a partnership or corporation, or on a reorganization within the meaning of section 368(a). See section 6901 and the regulations thereunder. In the latter situation the taxpayer will be liable for any interest on the penalty if the value of the assets transferred exceeds the amount of such penalty, other taxes, related penalties, and interest as precribed under the Internal Revenue Code. However, if the value of such transferred assets is less than the penalty, interest will not be collected from the transferee taxpayer.

Q–100. Is a pre-1984 account or instrument of a payor that is exchanged for an account or instrument of another payor as a result of a merger of the other payor or acquisition of the acounts or instruments of such payor transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

A–100. No. A pre-1984 account or instrument that is exchanged for another account or instrument pursuant to a statutory merger or the acquisition of accounts or instruments is not transformed into a post-1983 account or instrument because the exchange occurs without the participation of the payee. See A–34 of § 35a.9999–1.

Q–101. May the acquiring taxpayer described in A–100 rely upon the business records and past procedures of the merged payor or the payor whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments?

A–101. Yes. The acquiring payor may rely upon the business records and past procedures of the merged payor or of the payor whose accounts or instruments were acquired in order to establish due diligence to avoid the penalty under section 6676(b) with respect to

information returns that have been or will be filed.

Q-102. If the business records of a merged payor or of a payor whose accounts or instruments were acquired do not disclose whether an account is a pre-1984 or post-1983 account or instrument, how should the payor classify such account or instrument?

A-102. The payor described in Q-102 may presume that such account or instrument is a pre-1984 account or instrument for purposes of backup withholding and due diligence. A payor who so treats such accounts and instruments may comply with the provisions of A-56 of § 35a.9999-1 in the calendar year of such merger or acquisition to obtain relief from the penalty under section 6676(b) with respect to information returns filed for the year following the year of the acquisition or merger and subsequent calendar years. With respect to the requirement to backup withhold on such accounts or instruments with respect to which there is a missing or an obviously incorrect taxpayer identification number, the payor may commence such backup withholding no later than sixty days following the date of the merger or acquisition of such accounts or instruments. A payor who withholds as described under the prior sentence will meet the backup withholding criterion under A-56 § 35a.9999-1. A payor as described in this answer is not required to obtain a determination from the Internal Revenue Service as described in A-56 of § 35a.9999-1.

Q-103. Is a payor required to retain the notice of an incorrect taxpayer identification number described in § 35a.3406-1(b) (1) or (2) that the Internal Revenue Service or a broker sends to the payor?

A-103. Yes. The payor is required to maintain the notices (whether or not such payor imposes backup withholding on the account to which the notice relates or incurs any liability for backup withholding) for a period of four years after the later of (1) the due date of such tax (backup withholding) for the return period to which the notice relates, (2) the date an information return is filed reflecting the final payments that are subject to backup withholding as a result of the notice described in § 35a.3406-1(b) (1) or (2), or (3) the date the tax is paid with respect to the notice. See section 6001 and the regulations issued thereunder for other rules on record retention.

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

October 2, 1987.

[FR Doc. 87-26773 Filed 11-17-87; 1:52 pm]

BILLING CODE 4830-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Amendment of Commission Procedural Rule

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission, as a result of a decision in one of its recent adjudicative proceedings, is revising its procedural rule concerning the procedure by which a complainant may file a discrimination complaint with the Commission on his or her own behalf pursuant to the Federal Mine Safety and Health Act of 1977. This revision amends the Procedural rule to no longer permit a complainant to file a private discrimination complaint with the Commission prior to a final determination by the Secretary of Labor as to whether a violation has occurred. Because this change is procedural rather than substantive and is required by a Commission adjudicative decision, public comment has not been invited.

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street NW., 6th Floor, Washington, DC 20006, telephone: 202-653-5610 (202-566-2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Federal Mine Safety and Health Review Commission (Commission) is an independent adjudicatory agency providing trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1982) (Mine Act).

Section 105(c)(1) of the Mine Act, 30 U.S.C. 815(c)(1), prohibits discharge or discrimination against miners, representatives of miners, and applicants for employment, or interference with their protected statutory rights under the Mine Act. Section 105(c)(2), 30 U.S.C. 815(c)(2), provides that individuals protected by section 105(c) who believe that they have been discriminated against in violation of the Mine Act may file a complaint of discrimination with the Secretary of Labor (Secretary). Section 105(c)(2) further requires the Secretary to conduct an investigation of the complainant's complaint. If the Secretary determines that section 105(c)(1) has been violated, the Secretary is required to file a discrimination complaint with the Commission. 30 U.S.C. 815(c)(2). The complaint is heard before a Commission administrative law judge with discretionary appellate review before the Commission. Section 105(c)(3) of the Mine Act, 30 U.S.C. 815(c)(3), requires the Secretary, within 90 days of his receipt of the miner's complaint, to notify the miner of his determination as to whether a violation has occurred. That section also states that if the Secretary determines that no violation occurred, the complainant may file an action on his or her own behalf before the Commission within 30 days of notice of the Secretary's determination. The same opportunity for a hearing before an administrative law judge and discretionary review by the Commission exists when the complainant files such a private action.

Our previous Procedural Rule 40(b), 29 CFR 2700.40(b), permitted complainants to file private discrimination complaints with the Commission not only if the Secretary determined that no violation of section 105(c) of the Mine Act had occurred, but also if the Secretary failed to make a determination of violation within 90 days after the miner had complained to the Secretary. In *John A. Gilbert* v. *Sandy Fork Mining Co., etc.*, 9 FMSHRC 1327 (August 1987), *pet. for review filed*, No. 87-1499 (D.C. Cir. September 21, 1987), the Commission reexamined this procedural rule in light of a challenge to its validity raised by the Secretary in that proceeding.

The Commission determined that the rule was inconsistent with section 105(c) of the Mine Act. The Commission concluded that the plain language and structure of section 105(c)(3) of the Mine Act mandates that a complainant may file a private complaint with the Commission "*only* after the Secretary informs the complainant of his determination that a violation has not occurred * * *." *Gilbert, supra*, 9 FMSHRC at 1337 (emphasis in original). The Commission held that the statute is

"clear and express" concerning the filing of discrimination complaints: The Secretary is required to investigate all initial discrimination complaints filed under the Mine Act (30 U.S.C. 815(c)(2)); if the Secretary determines that section 105(c)(1) has been violated, the Secretary prosecutes a discrimination complaint on the complainant's behalf (*id.*); if, however, the Secretary finds that the Mine Act was not violated, then the complainant may file a private complaint with the Commission (30 U.S.C. 815(c)(3)). *Id.*

The Commission noted other federal statutory antidiscrimination schemes permitting complainants to file their own private complaints if the appropriate governmental investigating body had not acted on their charges within a given period and emphasized that the Mine Act did not contain such a provision. The Commission stated that it "must respect Congress' choice" in this regard. *Gilbert, supra,* 9 FMSHRC at 1338. The Commission also reiterated that the statute requires the Secretary to make his determination as to whether a violation occurred within the 90-day period specified in section 105(c)(3) for making this determination.

As a result of these conclusions, a majority of the Commission invalidated the final clause of Rule 40(b) and held that section 105(c)(3) of the Mine Act does not grant complainants the right to initiate actions on their own behalf with the Commission prior to the Secretary's final determination that no violation of section 105(c)(1) has occured.

The full text of the *Gilbert* decision is available for inspection and copying during normal business hours in the Commission Docket Office (Room 613), 1730 K Street NW., 6th Floor, Washington, DC 20006. Because Commission Procedural Rule 40(b), as amended, is a procedural rather than substantive rule, and because this amendment results from a Commission adjudication, public comment was not invited and no notice of proposed rule making was published prior to adoption.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health.

Accordingly, 29 CFR Part 2700 is amended as follows:

PART 2700—[AMENDED]

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815 and 823.

2. Section 2700.40(b) is revised to read as follows:

§ 2700.40 Who may file.

* * * * *

(b) *Miner, representative, or applicant for employment.* A complaint of discharge, discrimination or interference under section 105(c) of the Act, may be filed by the complaining miner, representative of miners, or applicant for employment if the Secretary determines that no violation has occurred.

Dated: November 16, 1987.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 87-26888 Filed 11-20-87; 8:45 am]

BILLING CODE 6735-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 98

[DoD Directive 7050.1]

Defense Hotline Program

AGENCY: Inspector General, Department of Defense.

ACTION: Final rule.

SUMMARY: The Defense Hotline is a program which provides DoD personnel, Defense contractor employees, and the general public a readily accessible means for reporting real or perceived instances of fraud, abuse, or mismanagement within the Department of Defense. This part provides the authority for establishment of the Defense Hotline, clarifies terminology, prescribes operating procedures, assigns responsibilities and requirements of the Inspector General and the DoD Components in implementing the programs, and establishes standards for conducting and reporting the results of the examination of Hotline complaints.

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin Simon, Office of the Inspector General, Department of Defense, The Pentagon, Washington, DC 20301. Telephone (202) 694-9068.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 98

Investigations.

Accordingly, Title 32, Chapter I, Subchapter B is amended to add Part 98 to read as follows:

PART 98—DEFENSE HOTLINE PROGRAM

Sec.

Authority: 5 U.S.C. 301 and 552.

§ 98.1 Purpose.

Under Secretary of Defense memorandum dated June 5, 1981 and 32 CFR Part 373, this part clarifies terminology, updates responsibilities and specific requirements to be met in conducting the examination of Defense Hotline allegations, and updates managing and operating procedures for the Defense Hotline Program.

§ 98.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD) and its field activities; the Military Departments, including the National Guard and Reserve components; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Inspector General of the Department of Defense (IG, DoD); and the Defense Agencies (hereafter referred to collectively as "DoD Components").

§ 98.3 Definitions.

"Abuse" Intentional or improper use of Government resources. Examples include misuse of rank, position, or authority or misuse of resources such as tools, vehicles, or copying machines.

"Examination" The act of examining, inspecting, inquiry, and investigation. For the purposes of the part, the term applies to audit, inspection, and investigative activity and encompasses the preliminary analysis, inquiry, audit, inspection, and investigation.

(a) *Audit.* An independent, objective analysis, review, or evaluation of financial records, procedures, and activities to report conditions found, and recommend changes or other actions for management and operating officials to consider. The term audit includes, in addition to the auditor's examinations of financial statements, work performed in

reviewing compliance with applicable laws and regulations, economy and efficiency of operations, and effectiveness in achieving program results. All audit work is accomplished in accordance with audit standards set forth in "Standards for Audit in Governmental Organizations, Programs, Activities, and Functions," issued by the Comptroller General of the United States.

(b) *Inquiry.* An informal administrative investigation or gathering of information through interview or interrogation rather than by inspection or study of available evidence. An inquiry does not preclude the gathering of available documentary evidence.

(c) *Inspection.* A method of assessing the efficiency of management, the effectiveness and economy of operations, and compliance with laws and directives, with particular emphasis on the detection and prevention of fraud and waste.

(d) *Investigation.* A systematic, minute, and thorough attempt to learn the facts about something complex or hidden. It is often formal and official.

(e) *Preliminary Analysis.* The activity necessary to determine if the allegation or information received warrants further examination, or lacks the credibility to merit additional action. The preliminary inquiry effort may be limited to interview of the source of the complaint and/or a reference provided in the allegation, or review of any readily available documentation or records relative to the complaint.

"Fraud" Any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States for an individual a benefit, privilege, allowance, or consideration to which he or she is not entitled. Such practices include: making false statements; submitting false claims; using false weights or measures; evading or corrupting inspectors or other officials; deceit either by suppressing the truth or misrepresenting material fact; adulterating or substituting materials; falsifying records and books of accounts; arranging for secret profits, kickbacks, or commissions; and conspiring to use any of these devices. The term also includes conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement and disposal matters.

"Independence" The state or quality of being free from subjection or from the influence, control, or guidance of individuals, things, or situations. As applied to examining officials and their respective organizations, there is a responsibility for maintaining neutrality and exercising objectivity so that opinions, judgments, conclusions, and recommendations on examined allegations are impartial and shall be viewed as impartial by disinterested third parties.

"Mismanagement" A collective term covering acts of waste and abuse. Extravagant, careless, or needless expenditure of Government funds or the consumption or misuse of Government property or resources, resulting from deficient practices, systems, controls, or decisions. Abuse of authority or similar actions that do not involve criminal fraud.

"Waste" The extravagant, careless, or needless expenditure of Government funds, or the consumption of Government property that results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.

§ 98.4 Policy.

(a) It is DoD policy to combat fraud and mismanagement in DoD programs and operations. To strengthen and focus departmental efforts in support of this policy, the Defense Hotline Program, under the direction and control of the IG, DoD, shall ensure that allegations of fraud and mismanagement are properly evaluated; substantive allegations are examined; appropriate administrative, remedial, or prosecutive actions are taken; and systems of records for the control of the Defense Hotline are established and maintained.

(b) All DoD Component hotlines shall comply with the guidelines prescribed by this part.

§ 98.5 Responsibilities.

(a) The Inspector General, Department of Defense, as the principal advisor to the Secretary of Defense on all matters relating to the prevention and detection of fraud and mismanagement, shall:

(1) Oversee the development of the Defense Hotline Program.

(2) Provide guidance to DoD Components for implementing DoD policies.

(3) Direct, manage, and control the operation of the Defense Hotline Program.

(4) Establish procedures to ensure that full and proper consideration is given to all cases of alleged fraud and mismanagement in the Department of Defense that are reported through the Defense Hotline Program.

(5) Ensure that audits, inspections, and investigations initiated as an integral part of the Defense Hotline Program are conducted under applicable laws, including the Uniform Code of Military Justice, court decisions, and DoD regulatory documents and policies.

(6) Conduct periodic quality assurance reviews of the DoD Component field investigative files to ensure that investigations of the Hotline allegations have been handled properly and that the findings and conclusions of the examiners are fully supported by the documentation contained in the official files.

(7) Periodically review and evaluate the operations of the Defense Hotline Program.

(8) Establish a Defense Hotline Advisory Group to:

(i) Review Defense Hotline allegations that have been referred in accordance with paragraph (b)(6) of this section and provide appropriate processing and referral instructions to the staff.

(ii) Review, upon request of the Defense Hotline staff, selected audit, inspection, and investigative Defense Hotline completion reports. Weaknesses and deficiencies identified by the examinations shall be referred to the IG, DoD, for appropriate action and resolution.

(iii) Review, or cause to be reviewed on an annual basis, those complaints that were received by the Defense Hotline staff and determined to be matters that did not warrant examination due to insufficient information, age of the allegation, nature of the complaint (i.e., personal grievance, suggestions, etc.), or because of the nonspecific nature of the allegation. The group shall also provide guidance to the staff based on the results of the review, as necessary.

(9) Direct that the applicable IG, DoD, element conduct an audit, inspection, or investigation of any allegation where it is determined that conduct of the inquiry by the involved agency or organization might result in a lack or perceived lack of objectivity or independence on the part of the examining officials. Coordination with the heads of the concerned DoD Components may be done before conducting the examination, if such action is considered appropriate.

(10) Ensure that any allegation made against a staff member of the IG, DoD, the Defense Hotline, or DoD personnel involved in conducting the audit, inspection, or investigative activity is examined in an impartial, independent, and objective manner.

(b) The Inspector General shall select, from nominees provided by the Assistant Inspectors General, the necessary professional and

administrative personnel to staff the Defense Hotline. The staff shall:

(1) Operate the Defense Hotline, recording the pertinent information of those allegations received by telephone, mail, or other means of communication that appear to merit examination; and maintain statistical data on all contacts (letters, telephone calls, personal interviews) that are received by the Defense Hotline.

(2) Establish controls to provide maximum protection for the identity of all persons using the Defense Hotline.

(3) Establish and maintain the required procedural controls, files, and records necessary for tracking the allegations from receipt through the phases of examination, closeout, and storage.

(4) Obtain from the complainant the specific information necessary to ascertain the substance of each allegation and complete a Defense Hotline Record of Call (Appendix A) to record and document those allegations determined to have sufficient merit to warrant referral to the appropriate DoD Component for action or as information matters.

(5) Advise the IG, DoD, or Deputy IG, DoD, of serious allegations or significant trends disclosed while operating the Defense Hotline.

(6) Prepare a Defense Hotline Decision Memorandum (Appendix B) for each valid letter allegation received, and indicate on the memorandum to which DoD Component the allegation is to be referred for either action or information purposes. The memorandum shall be a means for tracking and maintaining control of the complaint. The staff shall also provide any comments and guidance considered pertinent to the conduct of the examination.

(7) Refer items preliminarily determined to be sensitive, controversial, or involving flag or general officers or DoD civilian officials of GS/GM-15 equivalent or higher grades to the Defense Hotline Advisory Group for review and determination by the examining agency. Refer all other allegations directly to the DoD Component concerned.

(8) Coordinate with the General Accounting Office (GAO) Hotline on Defense Hotline Program-related matters. They shall also process all DoD-related allegations that are received from the GAO Hotline in the same manner as Defense Hotline Program allegations, and advise the Defense Hotline Advisory Group of any problems encountered in performing this function.

(9) Promptly process and refer to the appropriate DoD Component those allegations that warrant inquiry, and expedite the processing and referral of those allegations that are time-sensitive. The referral of time-sensitive allegations by telephone is permitted when any delay might adversely affect the efforts of the examining officials.

(10) Review and analyze all interim and final reports of examination to ensure that all aspects of the Defense Hotline complaint were addressed fully, the examinations were conducted properly, and appropriate corrective or punitive measures were taken based on the examination findings.

(11) Notify the appropriate DoD Component Hotline coordinator, by written memorandum, of discrepancies noted in individual reports or apparent deficiencies in the related examination, so that the DoD Component may review and, if necessary, reconduct an audit, inspection, or investigation of the complaint and submit a revised or corrected closing report.

(12) Notify the Defense Hotline Advisory Group of any significant instance when a report of completed examination indicates that the work performed did not meet prescribed audit, inspection, or investigative standards, or was defective in depth, scope, independence, or some other respect, or any instance when examination verifies the complaint of wrongdoing and the DoD Component declines to initiate corrective or punitive measures.

(13) Evaluate all allegations of criminal activity that involve the OSD, the OJCS, or DoD Components and, when warranted, initiate investigation. Conduct investigations of any other allegations, as directed by the IG, DoD.

(14) Investigate or participate in the investigation of Defense Hotline allegations of criminal activity that involve more than one DoD Component or involve other special circumstances.

(15) Ensure that professionalism and organizational independence are observed at all times and that investigations of allegations are conducted impartially and objectively.

(16) Retain all Defense Hotline Program case files for at least 2 years after the Defense Hotline staff has closed the inquiry, then retire the files in accordance with the appropriate DoD administrative Directives and Instructions.

(17) Develop and implement a follow-up system to ensure that recommended administrative or judicial corrective measures, tendered by the examining officials, have been implemented by the responsible authorities. The system should reflect the results of criminal prosecutions, sentences imposed, monetary recoveries, and administrative and other actions taken. When it has been determined that such corrective action has not been taken by the proper authorities, the staff should initiate action to bring the matter to the attention of the next higher command organization.

(18) Inform Defense Hotline agency and organization Hotline coordinators of substantive allegations passed directly to the IG, DoD, for action, if appropriate.

(19) Maintain liaison and communication with DoD Component Hotline coordinators, other Government Agencies and organizations, and external investigative agencies.

(20) Prepare periodic summary analyses of all Defense Hotline operations, including regular reports to the IG, DoD, for each 6-month period ending on March 31 and September 30, and to the Deputy Inspector General for Program Planning, Review and Management for use in the DoD, Office of the Inspector General "Semiannual Report to the Congress." Include in the semiannual report an accounting for all allegations received by the Defense Hotline office from all sources, and prepare them in accordance with the format required by DoD, Office of the Inspector General, "Semiannual Report to the Congress."

(21) Maintain the widest dissemination of information concerning the Defense Hotline Program by using such mechanisms as news releases, items in internal publications (including telephone directories), official notices, posters, and other media. Develop educational material for use in encouraging DoD employees to report fraud and mismanagement in DoD programs and operations.

(c) *Heads of DoD Components* shall establish and implement policies to ensure that the Defense Hotline Program is fully effective. To achieve that aim, they shall:

(1) Establish a single coordinator to manage, monitor, and report to the Defense Hotline the actions of audit, inspection, and investigative groups on allegations referred by the Defense Hotline to the DoD Component for action.

(2) Establish and implement operational procedures in accordance with the guidance in § 98.6.

(3) Have cognizant audit, inspection, and investigative organizations examine Defense Hotline complaints. The audit, inspection, and investigative organizations shall:

(i) Audit, inspect, or investigate Defense Hotline referrals in accordance with DoD standards and procedures,

and under the implementing guidance of the concerned agency or organization. Examination of Defense Hotline allegations by the Military Departments shall be conducted using the regulatory procedures of the concerned Service element.

(ii) Maintain appropriate records to ensure accountability of all Defense Hotline referrals until final disposition of the case.

(iii) Establish the administrative and operational controls and procedures necessary to provide maximum protection for the identity of any Defense Hotline Program source who requests anonymity or confidentiality.

(iv) Ensure that professionalism and organizational independence are observed and that audits, inspections, and investigations are conducted in an impartial and objective manner.

(v) Promptly process all allegations that have been referred by the Defense Hotline for action and expedite the examination of allegations that are time-sensitive.

(vi) Process and examine all allegations that have been referred as "information" matters to determine if an inquiry is warranted. Report any action taken as the result of the referral as outlined in paragraph (c)(3)(vii) of this section.

(vii) Submit a final report of the results of the inquiry through the Component Hotline coordinator to the Defense Hotline within 90 days from the date the complaint was transmitted by the Hotline for action. The report shall conform with the format prescribed in the Defense Hotline Completion Report (Appendix D). When an examination cannot be completed in 90 days, submit a Defense Hotline Progress Report (Appendix C) to the Defense Hotline stating the reason for the delay and the expected date of submission of the final report.

(viii) Submit to the Defense Hotline a Defense Hotline Progress Report on each open case on the 6-month anniversary date of the beginning of the investigation, using the format in Appendix C.

(ix) Submit progress reports to the Defense Hotline on the status of all audit actions or criminal investigations that have been open 6 months or more as of March 31 and September 30 to facilitate semiannual reporting under Pub. L. 95–452. Submit the cited status information 15 calendar days before the end of the 6-month period.

(x) Provide information or documentation on pending or closed examinations to the IG, DoD.

(xi) Ensure that documentation contained in the official examination file fully supports the findings and conclusions reflected in the Defense Hotline Completion Report. As a minimum, the file shall contain a copy of the Hotline Completion Report and a memorandum that reflects the actions taken by the examining official to determine the findings, complete identity of all witnesses, the date and information related during the interview, and specific details and location of all documents reviewed. The extent of the file documentation shall be dictated by the type of examination conducted.

(xii) Retain all working papers and files for 2 years from the date the matter was formally closed by the Defense Hotline. At the end of the 2-year period, retire the files in accordance with the pertinent administrative procedures of the DoD Component.

(4) Cooperate with the auditors, inspectors, and investigators by granting immediate and unrestricted access—except as is provided for by section F. of DoD Directive 5106.1 [1]—to personnel, documents, and records; and provide suitable working facilities and arrangements.

(5) Ensure, under reporting requirements outlined in paragraphs (c)(3) (vii), (viii), and (ix) that reports are promptly submitted to the referring audit, inspection, or investigative organization. Also, completion reports should reflect administrative, corrective, punitive, or other type action taken on cases referred to them for resolution.

(6) Maintain an active Defense Hotline publicity campaign, using local newspapers, official notices, posters, telephone directories, and other media. Implement education programs to encourage employees to identify and report fraud and mismanagement in DoD programs and operations.

§ 98.6 Procedures.

(a) Methods for processing and controlling the receipt, examination, and reporting of all allegations referred to DoD Components for audit, inspection, and investigation through the Defense Hotline Program are addressed in this section and § 98.5 and include procedures to track, monitor, and follow up on allegations referred to the Defense Hotline, regardless of source. Sources of allegations include The White House, Members of Congress, the GAO Hotline, Office of Management and Budget (OMB), other executive agency hotlines, DoD staff activities, and individuals communicating directly with the IG, DoD.

(b) Necessary controls shall be established to provide maximum protection for the identity of users of the Defense Hotline. Individuals shall be ensured that they can report instances of fraud and mismanagement without fear of reprisal or unauthorized disclosure of identity, as provided in Pub. L. 95–452 and DoD Instruction 7050.3.[2] However, individuals reporting alleged fraud and mismanagement should be encouraged to identify themselves to the Defense Hotline so that the Defense Hotline staff can recontact the source if additional information is needed.

(c) All substantive allegations received by the Defense Hotline shall be examined. The examination shall normally be conducted by disinterested and qualified auditors, inspectors, or investigators. When necessary, DoD Components may use individuals or groups with other professional or technical skills to assist in conducting examinations under the direct supervision of the responsible audit, inspection, or investigative officials.

(d) The procedures used must ensure that due professional care and organizational independence are observed, and that examinations are impartial and objective. Allegations must be examined by officials independent of the specific unit, office, staff element, operation, etc., in which the complaint is alleged to have occurred.

(e) DoD Components shall encourage personnel to register complaints and grievances through appropriate management and grievance channels, and submit suggestions for management improvements through the proper DoD Incentive Awards Program. There shall be no requirement for any individual who makes complaints or provides information to the IG, DoD, Defense Hotline representatives to discuss such complaints or information with the individual's supervisor or the head of the activity. DoD Components shall encourage the reporting of suspected fraud and mismanagement to the Defense Hotline either through the toll-free 800–424–9098 commercial, FTS 202–693–5080, or AUTOVON 223–5080 telephone system or by mail to the Defense Hotline, The Pentagon, Washington, DC 20301–1900.

§ 98.7 Information requirements.

The reporting requirements in § 98.5 are exempt from formal approval and

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, ATTN: Code 1052, Philadelphia PA 19120.

[2] See footnote 1 to § 98.5(c)(4).

licensing under subsection VII.F. of enclosure 3 to DoD Directive 5000.19. [3]

§ 98.8 Effective date and implementation.

This part is effective March 20, 1987. The Military Departments shall forward two copies of implementing documents to the Inspector General, Department of Defense, within 60 days. This part is the implementing guidance for all other DoD Components.

[3] See footnote 1 to § 98.5(c)(4)

BILLING CODE 3810-01-M

APPENDIX A- INSPECTOR GENERAL, DEPARTMENT OF DEFENSE,

DEFENSE HOTLINE :

RECORD OF CALL

CONTROL NUMBER: DATE:

ALLEGATION:

****

REFER FOR INDEPENDENT REVIEW BY: (*Tracking and Response Required*)

****

SUMMARY OF ALLEGATION[1]

****

[1] See the caveats on the next page.

([1] One of the listed "CAVEATS" to be placed on each allegation.)

NOTICE: The caller has requested confidentiality. However, the information contained herein may tend to identify him or her if revealed to those involved. Therefore, the details of this information shall not be made available to unauthorized personnel. *If partial release of information is required to* assist in the investigation, every effort shall be made to protect the source's identity in keeping with the Secretary of Defense Memorandum, June 5, 1981, and Public Law 95-452.

NOTICE: *The caller has chosen to remain anonymous. However, the information* contained herein may tend to identify him or her if revealed to those involved. Therefore, the details of this information shall not be made available to unauthorized personnel. If partial release of information is required to assist in the investigation, every effort shall be made to protect the source's identity *in keeping with the Secretary of Defense Memorandum*, June 5, 1981, and Public Law 95-452.

NOTICE: The identity of the complainant has not been deleted from the document in order to facilitate resolution of the matter. However, discretion must be *exercised in the use or release of* the source's identity to minimize the possibility of retaliatory action against the individual in keeping with the Secretary of Defense Memorandum, June 5, 1981, and Public Law 95-452.

DEPARTMENT OF DEFENSE, INSPECTOR GENERAL,

DEFENSE HOTLINE:

RECORD OF CALL

CONTROL NUMBER: DATE:

ALLEGATION:

****

REFER FOR INFORMATION TO:

NOTE: Review of this material revealed that it lacks sufficient detail or significant subject matter to warrant formal inquiry. Therefore, ACTION IS NOT REQUIRED. The case is forwarded as a matter of possible interest to the activity involved; if action is taken which substantiates the allegation, the results should be provided.

****

SUMMARY OF ALLEGATION

****

CONTROL NUMBER:

****

DATE OF CALL: TIME OF CALL:

CALLER'S NAME:

CALLER'S POSITION: (Civil Service Grade, Military Rank, or Civilian Title)

CALLER'S ADDRESS: (Specify Home or Business)

CALLER'S TELEPHONE NUMBER: ( ) ( )
(Specify Home or Business: AUTOVON, FTS, commercial)

****

DOES CALLER DESIRE CONFIDENTIALITY? (YES OR NO): ____

IS CALLER WILLING TO BE INTERVIEWED? (YES OR NO): ____

WHAT OTHER ACTION HAS THE CALLER TAKEN REGARDING THIS MATTER? (Indicate to whom, date, and results, if any)

****

****

HOTLINE WRITER'S COMMENTS:

****

HOTLINE REPRESENTATIVE (Surname): SUPERVISOR'S APPROVAL (Surname): TYPIST (initials):

APPENDIX B- INSPECTOR GENERAL, DEPARTMENT OF DEFENSE,

DEFENSE HOTLINE:

DECISION MEMORANDUM

CONTROL NUMBER: DATE:

****

REFER FOR INDEPENDENT REVIEW BY: (agency) (tracking and response required)[1]

****

COMMENTS

****

[1] See the caveats on the next page.

([1] One of the listed "CAVEATS" to be placed on each allegation.)

NOTICE: The caller has requested confidentiality. However, the information contained herein may tend to identify him or her if revealed to those involved. Therefore, the details of this information shall not be made available to unauthorized personnel. If partial release of information is required to assist in the investigation, every effort shall be made to protect the source's identity in keeping with the Secretary of Defense Memorandum, June 5, 1981, and Public Law 95-452.

NOTICE: The caller has chosen to remain anonymous. However, the information contained herein may tend to identify him or her if revealed to those involved. Therefore, the details of this information shall not be made available to unauthorized personnel. If partial release of information is required to assist in the investigation, every effort shall be made to protect the source's identity in keeping with the Secretary of Defense Memorandum, June 5, 1981, and Public Law 95-452.

NOTICE: The identity of the complainant has not been deleted from the document in order to facilitate resolution of the matter. However, discretion must be exercised in the use or release of the source's identity to minimize the possibility of retaliatory action against the individual in keeping with the Secretary of Defense Memorandum, June 5, 1981, and Public Law 95-452.

DEPARTMENT OF DEFENSE, INSPECTOR GENERAL,

DEFENSE HOTLINE:

DECISION MEMORANDUM

CONTROL NUMBER: DATE:

****

REFER FOR INFORMATION TO: (agency)

NOTE: Review of this material revealed that it lacks sufficient detail or significant subject matter to warrant a formal inquiry. Therefore, ACTION IS NOT REQUIRED. The case is forwarded as a matter of possible interest to the activity involved; if action is taken and the allegation is substantiated, the results should be provided.

****

COMMENTS

****

APPENDIX C- DEFENSE HOTLINE PROGRESS REPORT
AS OF: (APPLICABLE DATE)

1. Applicable DoD Component:
2. Hotline Control Number:
3. Date Referral Initially Received:
4. Status:
   a. Name of organization conducting examination.
   b. Type of examination being conducted.
   c. Results of examination to date (summary).
   d. Reason for delay in completing the examination.
5. Expected Date of Completion.
6. Action Agency Point of Contact (POC):
   a. Name of POC.
   b. Duty telephone number.

APPENDIX D- DEFENSE HOTLINE COMPLETION REPORT

AS OF:(APPLICABLE DATE)

1. Name of Official Conducting the Audit, Inspection, or Investigation:

2. Rank and/or Grade of Official:

3. Duty Position and Contact Telephone Number of Official:

4. Organization of Official:

5. Hotline Control Number:

6. Scope of Examination, Conclusions, and Recommendations:

a. Identify the allegations, applicable organization and location, person or persons against whom the allegation was made, dollar significance of actual or estimated loss or waste of resources.

b. Indicate the scope, nature, and manner of the examination conducted (documents reviewed, witnesses interviewed, evidence collected, and persons interrogated). The report shall reflect whether inquiries or interviews were conducted by telephone or in person. The identity of the interviewee need not be reflected in the report; however, this information shall be documented in the official field file of the examining agency. If individuals cited in the

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allegation are interviewed, the fact shall be reflected in the report. The specific identity and location of pertinent documents reviewed during the course of the examination shall be recorded and reflected in the report. Procurement history data shall be reflected in those complaints of spare parts excessive price increases.

c. Report findings and conclusions of the examining official. This paragraph may include program reviews made, comments as to the adequacy of existing policy or regulation, system weaknesses noted, and similar comments.

7. Cite Criminal or Regulatory Violation or Violations Substantiated.

8. Disposition--for examinations involving economies and efficiencies, report management actions taken in the final report. For examinations involving criminal or other unlawful acts, include the results of criminal prosecutions, providing details of all charges and sentences imposed. Include the results of administrative sanctions, reprimands, value of property or money recovered, or other such actions taken to preclude recurrence.

9. Specify security classification of information. Each examining organization must determine and state, when applicable, the security classification of information included in the report that might jeopardize national defense or otherwise compromise security if the contents were disclosed to unauthorized sources.

10. Indicate the location of Field Working Papers and Files.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
November 16, 1987.
[FR Doc. 87-26806 Filed 11-20-87; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6660

[AK-932-07-4220-10; A-026092, AA-60625, AA-60697]

Revocation of Executive Order No. 3305 and Partial Revocation of Public Land Order Nos. 1143 and 2394 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive Order and partially revokes two public land orders (PLOs) insofar as they affect approximately 0.96 acre of public land withdrawn and reserved for use as administrative sites by the Forest Service, Department of Agriculture, as the Ketchikan Dock Site, Ketchikan Marine Station, and Ketchikan Administrative Sites. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. If the land is not selected by the State, this order opens the land to metalliferous mining, pursuant to PLO 5180, as amended.

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Executive Order No. 3305, dated July 10, 1920; Public Land Order No. 1143, dated May 4, 1955; and Public Land Order No. 2394, dated May 25, 1961, which withdrew land for use by the Forest Service, Department of Agriculture as Administrative Sites, are hereby revoked insofar as they affect the following described lands:

Copper River Meridian

Ketchikan Dock Site

T. 75 S., R. 91 E. (Partially surveyed)
In the townsite of Ketchikan, Alaska, beginning at a point on the west side of Water Street in the harbor of Ketchikan, Alaska, whence the southwest corner of Lot 43 of the Ketchikan townsite bears S. 65°22' E. 61.76 feet;
Thence N. 42°9' W. 96 feet;
Thence S. 47°51' W. 85 feet;
Thence S. 42°9' E. 96 feet;
Thence N. 47°51' E. 85 feet to the place of beginning.
The area described contains approximately 0.187 acre.

Ketchikan Marine Station Site

T. 75 S., R. 90 E. (Unsurveyed)
Beginning at meander corner No. 4, U.S. Survey No. 1079, Alaska;
Thence S. 24°04' W. 115.46 feet along westerly line of said Ketchikan Marine Station;
Thence N. 90° E. 36.73 feet;
Thence N. 25°49' E. 93.49 feet to a point on the meander line of U.S. Survey No. 1079;
Thence N. 55° W. 37.07 feet along said meander line to the point of beginning.
The area described contains approximately 0.08 acre.

Ketchikan Administrative Sites

T. 75 S., R. 90 E. (Unsurveyed)
Lot 3, U.S. Survey No. 1079, Alaska, situated within the city limits of Ketchikan, Alaska; and
That portion of lot 4, U.S. Survey No. 1079, Alaska, described as follows:
Beginning at corner No. 1, lot 4, U.S. Survey No. 1079, Alaska;
Thence S. 64°11' E. 37.50 feet along the northerly line of said lot 4;
Thence S. 25°49' W. 35.60 feet to a point on the meander line of U.S. Survey No. 1079;
Thence N. 55°00' W. 37.07 feet along the meander line to meander corner No. 4 U.S. Survey No. 1079;
Thence N. 24°04' E. 29.70 feet to the point of beginning.
The areas described aggregate approximately 0.69 acre.
The areas described aggregate a total of approximately 0.96 acre.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437-2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above for a period of ninety-one (91) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO 5180, as amended, and other withdrawals of record.

4. At 10 a.m. February 22, 1988, the land described in paragraph 1 will be opened to location and entry under the United States mining laws for metalliferous minerals, subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable laws. Appropriation of any land described in this order under the general mining laws for metalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene between rival locators over possessory rights since Congress has provided for such determinations in local Courts.

J. Steven Griles,
Assistant Secretary of the Interior.
November 10, 1987.
[FR Doc. 87-26890 Filed 11-20-87; 8:45 am]
BILLING CODE 4310-JA-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78-16; Notice 6]

Federal Motor Vehicle Safety Standards; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule amends Standard No. 204, *Steering Control Rearward Displacement,* to extend its coverage of trucks, buses, and multipurpose passenger vehicles. The standard currently applies to trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and an unloaded vehicle weight of 4,000 pounds or less. This final rule raises the unloaded vehicle weight limitation to 5,500 pounds. Agency research has consistently shown that steering assemblies are a major source of driver-

related injuries in light trucks and multipurpose passenger vehicles (e.g., van-type passenger vehicles and utility vehicles). Limiting the amount of steering column displacement should help reduce those injuries since research has demonstrated the effectiveness of Standard No. 204 in reducing steering column-related injuries.

DATES: The effective date of changing the Code of Federal Regulations to reflect the amendments in this notice is January 7, 1988. Petitions for reconsideration must be received by December 23, 1987. The expanded application of the standard takes effect September 1, 1991. Each truck, bus, and multipurpose passenger vehicle that is manufactured on or after that date, and has a gross vehicle weight rating of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less must comply with the requirements of the standard.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366–4916.

SUPPLEMENTARY INFORMATION: On November 9, 1978 (43 FR 53364), the agency proposed extending the applicability of Standard No. 204, as well as that of two other passenger car standards, to trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The agency proposed these changes since research has indicated that additional safety improvements were needed to reduce steering assembly-related injuries to drivers of light trucks, utility, and van-type vehicles. Based on the demonstrated effectiveness of steering assembly-related improvements in passenger cars, the agency amended Standard No. 204, *Steering Column Rearward Displacement,* on November 29, 1979 (44 FR 68470) to extend its applicability to vehicles with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 4,000 pounds or less. The agency explained that it took that action while it continued to study methods for dealing with certification problems, which were fully discussed in the November 1979 notice, experienced by final-stage manufacturers of vehicles that have an unloaded vehicle weight greater than 4,000 pounds.

On April 4, 1985 (50 FR 13403), NHTSA proposed to complete this rulemaking action by extending the benefits of Standard No. 204 to additional vehicles. Based on an analysis of the comments received in response to the notice, NHTSA has decided to adopt the proposal and extend the applicability of the standard to vehicles that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and an unloaded weight of greater than 4,000 pounds, but not greater than 5,500 pounds. The issues raised by the commenters and the reasons for the agency's decision are discussed below.

Support for the Extension

The commenters generally supported the proposed extension of the standard, although several of the commenters raised concerns about the leadtime. Chrysler said that it "generally concurs with the appropriateness of extending the applicability" of the standard. Chrysler said that most of its vehicles could comply with two years of leadtime. It did, however, request one year of additional leadtime for forward control vehicles, saying that the "very short front end and limited crush space on forward control vehicles requires the development of a very efficient energy management system to maximize passenger compartment integrity and control displacement of the steering assembly." Ford said that it did not object to the proposed extension, but questioned whether the strengthening of a vehicle's front end to limit steering column intrusion could make the vehicle more aggressive in impacts with other vehicles. General Motors (GM) also questioned whether the structural changes made to comply with the standard would adversely affect the safety of occupants in vehicles struck by the light trucks, buses, and multipurpose passenger vehicles covered by the proposed rule. GM asked the agency to defer adoption of a final rule until this issue is resolved.

The Insurance Institute for Highway Safety (IIHS) also supported the proposed extension saying that "the need for protection of drivers of these vehicle from steering assembly-related injuries has increased due to the growing popularity and increased numbers of vehicles in this weight range." IIHS urged the agency to consider an earlier effective date noting that some manufacturers may have already redesigned their steering columns in response to the earlier final rule extending the standard to some light trucks, vans, and multipurpose passenger vehicles.

NHTSA has decided to adopt the proposed extension to light trucks, MPV's, and buses with unloaded vehicle weight up to 5,500 pounds to reduce occupant deaths and injuries in those vehicles. NHTSA disagrees with Ford and GM that the extension will promote more aggressive vehicle designs and negatively affect the safety of occupants of passenger cars and vehicles not covered under today's rule. The vehicles affected by this final rule have already been designed to withstand the 30 mile per hour barrier impact tests required by Standards No. 212, 219, and 301.

Neither GM nor Ford provided any information indicating why and to what degree further strengthening of the vehicle's frontal structure is needed to comply with Standard No. 204. NHTSA believes steering column designs are capable of limiting steering column intrusion without having to increase frontal stiffness. Therefore, the agency believes that extending the applicability of the standard need not increase the aggressivity of the vehicles covered by the standard.

Effect on Final Stage Manufacturers

Winnebago Industries filed comments addressing the concern of small incomplete and final-stage manufacturers, such as itself. Winnebago explained that it manufactures a front wheel drive multi-purpose vehicle which consists of components supplied by a variety of companies. It expressed concern that if the proposed requirements were adopted, the burden of redesigning the affected vehicle components might fall on the final-stage manufacturer, which has limited engineering and financial resources. Winnebago said that final-stage manufacturers would have to conduct the necessary testing to determine whether the redesigned vehicle complied with the standard.

The agency has considered the compliance difficulties described by Winnebago for final-stage manufacturers and has determined that the 5,500 pound unloaded weight limit of this adopted extension of Standard No. 204 provides sufficient relief from those problems. As described in the proposal to this rule, the effect of this rule on the multi-stage manufacturing process has been addressed in past rulemaking actions. A brief summary is appropriate.

In November 1978, NHTSA proposed to extend Standard No. 204 and two other companion standards to all

multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less. The final rule issued in November 1979 extended Standard No. 204's applicability only to those vehicles with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 4,000 pounds or less. NHTSA explained that it took that action while it continued to study methods for dealing with certification difficulties experienced by final-stage manufacturers of vehicles having an unloaded vehicle weight greater than 4,000 pounds. NHTSA then completed its evaluation of possible solutions to those certification difficulties, and in rulemaking on Standard Nos. 212, *Windshield Mounting*, and 219, *Windshield Zone Intrusion* (45 FR 22044; April 3, 1980), the agency provided the 5,500 pound unloaded vehicle weight limit as a reasonable means of reducing compliance problems for final-stage manufacturers without compromising occupant safety.

Amending Standard No. 204 to adopt the 5,500 pound weight limit thus completes the original plan of the agency to upgrade the performance of steering columns for multipurpose passenger vehicles, light trucks and buses, and succeeds in making test requirements consistent wherever possible. NHTSA is aware of no indications that final-stage manufacturers are experiencing compliance problems with Standards Nos. 212 and 219 notwithstanding the 5,500 pound unloaded vehicle weight limit provided for their benefit, and is aware of no data showing that the 5,500 pound limit will provide insufficient relief in the case of Standard No. 204. In the absence of evidence substantiating the claims that the 5,500 pound limit will not provide the intended relief, NHTSA is proceeding with the extension of Standard No. 204 as proposed.

Use of a Driver Test Dummy

As presently codified in the Code of Federal Regulations, the text of Standard No. 204 is followed by a note setting forth two agency interpretations concerning the test procedures of the standard. The agency adopted these interpretations soon after the original standard was issued in 1967. The first interpretation states that a driver test dummy may be used during a compliance test without measuring the impact force developed on the chest. The agency has never used a driver test dummy in its compliance test because of the possibility that the test dummy could interfere with the rearward displacement of the steering column. In addition, the use of such a dummy would preclude the use of a scratch tube device for measuring steering control dynamic displacement, which is the measurement device the agency has used in its compliance testing. (A scratch tube is a metal tube mounted to the steering column that has a sharp marking device that scratches the tube during a crash to indicate the amount of steering column displacement.) NHTSA explained that it was proposing to delete the interpretative note on the use of the test dummy since the agency believed the note was unnecessary, and because the agency understood that no manufacturer used a test dummy when conducting Standard No. 204 compliance tests.

Both Ford and GM objected to the proposed deletion of the interpretative note permitting the use of a driver test dummy. Ford explained it does combined compliance tests for Standards Nos. 204, 208, 212, 219, and 301 and noted that all of those tests, except for Standard No. 204, require the use of a test dummy in the driver's seat. GM opposed the proposed deletion because it uses a photographic technique for measuring steering column intrusion which is not affected by the presence of a test dummy.

Although Ford and GM have provided new information on manufacturers' use of a test dummy for Standard No. 204 compliance testing, NHTSA still believes that the interpretative note is unnecessary and will delete it from the standard. NHTSA is aware of no reason for keeping the note in the standard. In fact, as explained below, Ford's and GM's comments indicate that the note engenders some confusion about the nature of the compliance test procedures set forth in our motor vehicle safety standards, and this gives the agency further reason for deletion.

It appears that Ford and GM object to removing the interpretative note because they believe such an amendment to Standard No. 204 is commensurate with a prohibition against the use of the test dummy. That belief reflects a misunderstanding of the compliance test procedures established by the Federal motor vehicle safety standards. The compliance testing procedure in any of the safety standards specify the procedures NHTSA will undertake in its compliance tests. Manufacturers, in certifying their vehicles, must exercise due care in ensuring that their vehicles will comply with the applicable motor vehicle safety standards when tested by this agency under the procedures set forth in the standards. Manufacturers are free to choose the manner in which to satisfy this "due care" standard and are *not* compelled to test their vehicles only in accordance with the procedures specified by any standard. Thus, NHTSA's removal of the test dummy note in Standard No. 204 does not prohibit manufacturers from continued use of a test dummy. This amendment does not reduce in any manner their prerogative to use a test dummy or any other device to determine compliance, and does not preclude them from demonstrating, in the event a potential noncompliance arises, that they have exercised due care in ensuring that their vehicles will comply with Standard No. 204 when tested by NHTSA with the scratch tube device described in the test procedures for the standard.

Crash Test Speed Correction Factor

The second NHTSA interpretation concerning Standard No. 204 explains how to correct steering column rearward displacement measurements for impact speeds greater than 30 mph. NHTSA adopted the interpretation at a time when it was not possible to control closely a vehicle's impact speed in a barrier crash. At present, however, the test speeds for barrier impact tests can be precisely controlled to within $\pm$ 0.5 mph of the intended impact speed. Because of this advance in the state-of-the-art of impact testing, NHTSA believed that there was no longer a need for a correction factor and thus the agency proposed deleting it.

Ford objected to the proposed deletion of the interpretative note providing a formula for adjusting steering column displacement based on differences in impact speeds. Ford said that it conducts much of its barrier crash tests at 35 mph to determine how its vehicles will perform in the agency's New Car Assessment Program (NCAP) crash tests, which uses a 35 mph crash test. Ford said it is concerned that if it cannot use the formula to adjust the steering column displacement measured in 35 mph tests, it will have to conduct another test at 30 mph, to verify that its vehicles comply with Standard No. 204. Ford said that since the current formula has an upper limit of 33 mph, it should be changed to 35 mph to promote the use of crash tests at that higher speed.

In addition, Ford said that use of the formula promotes international harmonization since the regulations of the Economic Commission for Europe (ECE) uses a barrier impact speed of 50 km/h, which is equal to 31.1 mph. Ford said that because "manufacturers typically aim for test speeds above that required by the ECE standards in order to assure that all tests are at least equal

to the required speed, actual test speeds would probably range from 31 to 32 mph." Further, because Ford was concerned that it would be no longer able to base its safety certification of current production or future carryover models on tests that relied on the speed correction factor, it asked the agency to provide a suitable period for manufacturers to adjust to the removal of the interpretative formula.

NHTSA believes the interpretative note on the speed correction factor should be removed from Standard No. 204 for the same reasons the agency is removing the note on the test dummy. As explained above, NHTSA is removing the notes to improve the clarity of the standard. The agency is not limiting in any manner the ability of manufacturers to use the testing devices and mechanisms described in the notes. Because the speed correction factor note in Standard No. 204 is *not* a form of "permission" allowing manufacturers to test their vehicles at speeds other than 30 mph, its removal should not affect manufacturers' compliance testing. Manufacturers may continue to combine their Standard No. 204 testing with the tests conducted for the NCAP and the ECE standards. Of course, manufacturers should ensure that their vehicles will meet the requirements of Standard No. 204 at 30 mph.

Barrier Test Procedures

GM was the only commenter to specifically address the proposed amendments to incorporate several test requirements that are used in the agency's other crash test standards. GM supported the proposed changes saying that it already has followed those test procedures in its own compliance tests.

NHTSA has decided to adopt the changes as proposed. The pre-impact test procedures adopted in today's final rule require latching the vehicle's door, disengaging the parking brake, placing the transmission in neutral and inflating the vehicle's tires to the manufacturer's specified tire pressure, positioning an adjustable steering wheel at its mid-position, and filling the fuel tank to 90 to 95 percent of its capacity. These procedures have been followed in the agency's other crash test standards and adopting them in Standard No. 204 will make the agency's standards more consistent.

Leadtime

At the time that Standard No. 204 was originally extended to trucks, buses and multipurpose passenger vehicles, the agency provided approximately two years of leadtime. This leadtime was based on a cost and engineering analysis performed for the agency that estimated the required leadtime as 18 to 24 months. In the April 1985 notice, the agency proposed to provide two years of leadtime for the proposed extension of the standard.

In their comments, manufacturers requested from two to three years of leadtime to make the necessary changes. As discussed earlier, Chrysler said that most of its vehicles could comply with two years of leadtime. However, it requested one year of additional leadtime for forward control vehicles. Ford also indicated that "most of its current production of trucks, buses. and multipurpose passenger vehicles in the 4,000 to 5,500 pound weight range, including all conventional trucks in this weight range, would meet the column displacement limits." However, it also said that some of its van-type vehicles may have to be redesigned to comply with the requirements. Thus, Ford requested the agency to provide one additional year of leadtime. Winnebago Industries said it would need three years of leadtime—one year to assess the performance of its current vehicles and two years to make the necessary design changes.

GM indicated that its vehicles could comply with two years of leadtime. GM said "it is expected that the C and K model Blazer, Suburban, and pickup truck models, and the standard size van models would require design changes to meet the proposed requirements." GM estimated that it would require "up to 25 months of leadtime from design to production." GM also suggested that the standard might make it necessary for GM to have to impose new weight and center of gravity restrictions on its incomplete vehicles in the short term. In the longer term, restrictions may not be needed.

After carefully considering each of the comments. the agency has decided to set a September 1, 1991 effective date for the extended requirements of Standard No. 204. This date provides a sufficient amount of time to manufacturers who will be redesigning their vehicles to achieve compliance. While NHTSA acknowledges that manufacturers' comments indicate that many of their vehicles already comply with the standard and others will be able to comply with minimal design changes, the agency recognizes that the amount of redesign necessary to comply with the requirements of the standard will vary considerably from vehicle to vehicle. The agency realizes that, as Chrysler observed in its comments, preparing an effective design for forward control vehicles can be difficult because of the lack of frontal structural in those vehicles. The effective date of this amendment to Standard No. 204 will accommodate redesigning efforts by all manufacturers without penalizing those who are faced with the more complex re-evaluation of their vehicles.

NHTSA has provided the long leadtime period also to enable manufacturers to coordinate their Standard No. 204 design changes with those necessary to achieve compliance with new requirements adopted for dynamically testing light trucks and multipurpose passenger vehicles with manual safety belts. NHTSA has adopted a September 1, 1991 effective date for the safety belt rule, and the agency recognizes that manufacturers will be re-evaluating their vehicles and making necessary design changes to ensure that they can meet the new requirements. To avoid imposing excessive costs resulting from manufacturers having to make two separate sets of design changes, NHTSA has decided to set the September 1, 1991 effective date for both Standard Nos. 204 and 208.

Cost and Benefits

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has placed in the docket a regulatory evaluation of the economic and other effects of this rulemaking action. This regulatory evaluation has been placed in Docket No. 78–16; Notice 6. Any interested person may obtain a copy of this regulatory evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

To briefly summarize the regulatory evaluation, the agency estimates that the modifications necessary to comply with the standard will cost approximately $4.05 for trucks and $20.04 for multipurpose passenger vehicles and buses. The cost differential is due to the differences in vehicle configuration which, of course, affect the extent of the modifications needed to comply with Standard 204. Because buses and multipurpose passenger vehicles, such as vans, have generally shorter front ends and higher steering column angles, and also a steering gear box that is mounted forward of the chassis frame, they typically require an additional intermediate steering shaft with double universal joints to meet the standard's limit on rearward

displacement of the steering control. In contrast, light trucks would need only a co-axial slip joint to comply, which is less expensive than the double "U" joint shaft described above. Since most of the vehicles in the 4,000–5,500 pounds unloaded vehicle weight fleet are trucks, the average cost per affected vehicle is in the $7 to $9 range. Based on the estimated number of vehicles that are not currently in compliance, the total consumer cost of the amendment is $2.8 to $6.7 million per year. The agency estimates that this rulemaking action annually will reduce an estimated 12 to 23 fatalities and 146 to 275 serious injuries once all vehicles in the fleet meet the standard.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I certify that it will not have a significant economic impact on a substantial number of small entities. The primary cost effect of this final rule will be on incomplete vehicle manufacturers, which are large corporations. Although many final-stage manufacturers are small businesses, NHTSA estimates that most of those businesses would not be significantly affected by the requirements adopted today. The impacts on small businesses are discussed briefly below and in more detail in the agency's final regulatory evaluation, which has been placed in the docket for this final rule.

NHTSA estimates that a substantial number of final-stage manufacturers will not be significantly affected by this final rule because of the 5,500 pound limit on unloaded vehicle weight adopted today. In many instances, businesses involved in the final-stage manufacturing of a vehicle are adding substantial items of heavy work-performing equipment to a truck chassis, or are otherwise manufacturing vehicles with an unloaded vehicle weight of greater than 5,500 pounds. Since today's rule extends Standard No. 204 only to vehicles with an unloaded vehicle weight of 5,500 pounds or less, NHTSA believes most vehicles completed by final-stage manufacturers would not be covered by the requirements adopted today.

In the case of vehicles that will be covered by the steering column displacement test requirement, converters and final-stage manufacturers have a number of different alternatives. The manufacturers of the truck or van chassis used by final stage manufacturers are required to provide information on what center of gravity, weight, and other limitations must be followed for the vehicle to remain in compliance with all the agency's safety standards. Final-stage manufacturers and converters can stay within the limitations prescribed by the original chassis manufacturer and thus the final vehicle will continue to comply. They may also choose to finish the vehicle outside of the limits imposed by the original manufacturer and do the necessary testing or engineering analysis to show that the vehicle still complies with the steering column displacement requirement. Finally, alterers or final-stage manufacturers that use a chassis intended for a completed vehicle of 10,000 pounds or less GVWR may complete the vehicle so that its unloaded vehicle weight is greater than 5,500 pounds, or use a vehicle with a GVWR greater than 10,000 pounds, and not be covered by the standard.

Small organizations and governmental units should not be significantly affected. Those entities may be purchasing new vehicles covered by today's final rule, including some multistage manufactured vehicles. There might be a relatively small price increase for some vehicles, but NHTSA anticipates no significant impacts for any small entity.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

For the reasons set out in the preamble, Part 571 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. 49 CFR 571.204 is revised to read as follows:

§ 571.204 Standard No. 204; Steering control rearward displacement.

S1. *Purpose and scope.* This standard specifies requirements limiting the rearward displacement of the steering control into the passenger compartment to reduce the likelihood of chest, neck, or head injury.

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks, and buses. However, it does not apply to walk-in vans.

S3. *Definitions.*

"Steering column" means a structural housing that surrounds a steering shaft.

"Steering shaft" means a component that transmits steering torque from the steering wheel to the steering gear.

S4 *Requirements.*

S4.1 *Vehicles manufactured before September 1, 1991.* When a passenger car or a truck, bus, or multipurpose passenger vehicle with a gross vehicle weight rating of 10,000 pounds or less and an unloaded vehicle weight of 4,000 pounds or less is tested under the conditions of S5 in a 30 mile per hour perpendicular impact into a fixed collision barrier, the upper end of the steering column and shaft in the vehicle shall not be displaced more than 5 inches in a horizontal rearward direction parallel to the longitudinal axis of the vehicle. The amount of displacement shall be measured relative to an undisturbed point on the vehicle and shall represent the maximum dynamic movement of the upper end of the steering column and shaft during the crash test.

S4.2 *Vehicles manufactured on or after September 1, 1991.* When a passenger car or a truck, bus, or multipurpose passenger vehicle with a gross vehicle weight rating of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less is tested under the conditions of S5 in a 30 mile per hour perpendicular impact into a fixed collision barrier, the upper end of the steering column and shaft in the vehicle shall not be displaced more than 5 inches in a horizontal rearward direction parallel to the longitudinal axis of the vehicle. The amount of displacement shall be measured relative to an undisturbed point on the vehicle and shall represent the maximum dynamic movement of the upper end of the steering column and shaft during the crash test.

S5 *Test conditions.* The requirements of S4 shall be met when the vehicle is tested in accordance with the following conditions.

S5.1 The vehicle, including test devices and instrumentation, is loaded to its unloaded vehicle weight.

S5.2 Adjustable steering controls are adjusted so that a tilting steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. A telescoping steering control is set at the adjustment position midway

between the forwardmost and rearwardmost position.

S5.3 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S5.4 Doors are fully closed and latched but not locked.

S5.5 The fuel tank is filled to any level from 90 to 95 percent of capacity.

S5.6 The parking brake is disengaged and the transmission is in neutral.

S5.7 Tires are inflated to the vehicle manufacturer's specifications.

Issued on: November 18, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-26931 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 74-14; Notice 53]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule requires light trucks and light multipurpose passenger vehicles (e.g., utility vehicles capable of off-road use and van-type passenger vehicles) equipped with manual lap/shoulder safety belts for the front outboard seats to comply with the injury reduction criteria of Standard No. 208, *Occupant Crash Protection,* in a 30 mile per hour barrier crash test. This rule also responds to dummy positioning issues raised in petitions for reconsideration of the final rule adopting the use of the Hybrid III dummy.

The vehicles subject to this final rule are those with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. Thus, this final rule will require the vast majority of multipurpose passenger vehicles and light trucks to meet the new manual belt performance requirements of the standard.

The GVWR and unloaded weight limits adopted in today's final rule will avoid imposing a testing and paperwork burden on most small businesses that either install a body on a chassis manufactured by another company or alter vehicles previously certified by other manufacturers. NHTSA is limiting the effects of this rule on small businesses to the extent possible, because most small businesses do not have the technical and financial resources necessary to do the testing or engineering analysis needed to determine whether their completed vehicles will meet the requirements of the new dynamic test for safety belts.

The dynamic test requirement will go into effect for multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less beginning on September 1, 1991. Unlike the dynamic test requirement for manual safety belts in passenger cars, the rule adopted today is not conditional. The requirement for cars with manual safety belts is conditional in that it becomes effective only if the automatic restraint requirement for cars is rescinded as a result of the enactment of State safety belt use laws covering two-thirds of the U.S. population and meeting criteria set forth in Standard No. 208.

DATES: The amendments made by this final rule are effective on May 23, 1988. Multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less must comply with the dynamic testing requirements of S4.6 of Standard No. 208 beginning on September 1, 1991.

Petitions for reconsideration must be filed by December 23, 1987.

ADDRESS: Petitions for reconsideration should refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, Telephone (202) 366-2264.

SUPPLEMENTARY INFORMATION: On April 12, 1985 (50 FR 14589), NHTSA published a notice, which is the basis for the final rule being issued today, proposing a number of amendments to Standard No. 208, *Occupant Crash Protection.* Among the proposals was one that manual lap/shoulder belts installed at the front outboard seating positions of four different vehicle types comply with the dynamic testing requirements of Standard No. 208. That notice proposed to use test dummies in 30 mile per hour barrier crash tests to measure the level of protection offered by the vehicle's manual lap/shoulder safety belts. (The same test conditions and procedures are used for testing the protection provided by automatic restraint systems, such as automatic safety belts and air bags, in passenger cars.) The four vehicle types subject to this proposal were passenger cars and light trucks, buses, and multipurpose passenger vehicles, i.e., trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. On March 21, 1986 (51 FR 9800), NHTSA adopted a dynamic test requirement for manual lap/shoulder safety belts in the front outboard seats in passenger cars. The dynamic test requirement for manual lap/shoulder belts in passenger cars will go into effect on September 1, 1989, if the automatic restraint requirement is rescinded as a result of the enactment of State safety belt use laws covering two-thirds of the U.S. population and meeting criteria set forth in Standard No. 208.

This final rule adopts a dynamic test requirement for the lap/shoulder safety belts installed in the front outboard seating positions of light trucks and multipurpose passenger vehicles. Several of the issues discussed with respect to those vehicle types in this final rule, such as the adjustment that will be made to safety belt tension-relieving devices prior to the crash test, have already been discussed with respect to passenger cars in prior agency final rules. To assist readers in understanding all of the effects of the new dynamic test requirement for safety belts in light trucks and multipurpose passenger vehicles, those discussions have been repeated in this final rule.

Dynamic Testing of Manual Safety Belts

Most of the commenters favored adopting a dynamic test requirement for manual belts, at least as to passenger cars, although many of those commenters raised questions about the leadtime needed to comply with the requirement. Those opposing the requirement argued that the field experience has shown that current manual safety belts provide substantial protection and thus a dynamic test requirement is not necessary. In addition, they argued that dynamic testing would substantially increase a manufacturer's testing costs and workload and could pose problems for final-stage manufacturers and vehicle alterers.

As discussed in detail below, the agency has now decided to adopt a dynamic test requirement for manual lap/shoulder belts in the front outboard seats of light trucks and light

multipurpose passenger vehicles, which includes such vehicles as light vans and light utility vehicles. To reduce potential problems for final-stage vehicle manufacturers and vehicle alterers, the agency is limiting the dynamic test requirement to vehicles which have a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. The requirement will go into effect for light trucks and light multipurpose passenger vehicles on September 1, 1991.

The agency has decided not to apply a dynamic test requirement to buses at this time. Standard No. 208 only requires the installation of a safety belt for the driver of a bus and gives manufacturers the option of installing either a lap safety belt or a lap/shoulder safety belt for the driver. The agency is concerned that applying a dynamic test requirement to a lap/shoulder belt that is voluntarily installed in a bus might encourage manufacturers to replace the lap/shoulder belt with a less costly lap belt, which would not be subject to a dynamic test requirement. Today's final rule should, however, also work to improve the safety of van-type buses since many of those vehicles are based on a chassis that is the same as or similar to the chassis used in light van-type multipurpose passenger vehicles that will be covered by the dynamic test requirement. (Under the agency's regulations, a bus is a vehicle that carries more than 10 persons. Thus, a van-type vehicle with four rows of seats that carries 12–15 people would be classified as a bus. Under the agency's regulations, a multipurpose passenger vehicle is a vehicle that is designed to carry 10 or less persons and is either built on a truck chassis or has features for occasional off-road use. Thus, a passenger van-type vehicle that is designed to carry 9 or fewer persons would be considered a multipurpose passenger vehicle.)

The issues raised by the commenters and the reasons for the agency's decisions are discussed below.

Safety Need

As mentioned previously, most of the commenters favored the adoption of a dynamic test requirement for manual safety belt systems. The commenters favoring adoption of the requirement were the American Seat Belt Council, Center for Auto Safety, General Motors, Insurance Institute for Highway Safety, Mercedes-Benz, National Transportation Safety Board. Porsche, State Farm Mutual Insurance Co., and Volkswagen. In expressing their support for dynamic testing, the commenters generally did not distinguish between dynamic testing of safety belts in passenger cars and dynamic testing of safety belts in light trucks, buses and multipurpose passenger vehicles. The Insurance Institute for Highway Safety, however, did specifically address the dynamic testing of safety belts in vehicles other than passenger cars. It said that "requiring the dynamic testing of manual belts would result in the upgrading of the crash performance of many vehicles, including light trucks, vans, and utility vehicles, for which automatic restraint requirements have not yet been proposed."

The proposed dynamic test requirement was opposed by American Motors Corporation (AMC), Chrysler, Fiat, Ford, the Motor Vehicle Manufacturers Association (MVMA), and Toyota. In addition, Peugeot and Renault requested the agency to adopt a laboratory test procedure used by the Economic Commission for Europe rather than use a vehicle crash test to measure the dynamic performance of safety belts.

In questioning the safety need for dynamic testing, AMC, Chrysler, Ford, and MVMA said that current field data do not show a need for dynamic testing. Ford said that available crash data indicate "occupants of full-size light trucks are exposed to less risk of collision injuries than occupants of either passenger cars or compact trucks. Moreover, full-size light trucks are far more likely to collide with smaller, lighter vehicles than with vehicles whose mass is comparable to or greater than that of such trucks." (In its comments, Ford explained that it used the term "full-size light truck" to mean trucks, such as its F-Series/Bronco and Econoline vehicles, that have derivatives with GVWR's greater than 8,500 pounds.) In addition, Ford said that a "30 mph fixed barrier test requirement represents an unrealistically severe test for many full-size light trucks because they weigh much more than typical passenger cars" and full size light trucks "are not likely to experience an impact of 30 mph barrier equivalent velocity on the highway."

The agency strongly agrees with the commenters that current manual safety belts provide very substantial protection in a crash. The Department's 1984 occupant protection decision concluded that current manual safety belts, when worn, are at least as effective, and in some cases, more effective than current automatic belt designs. That conclusion was based on current manual safety belts, which are not certified to dynamic tests. However, as discussed in the April 1985 notice, the agency is concerned that as more tension-relieving devices are used on manual belts and as an increasing number of vehicles are reduced in size, the potential for occupant injury may increase. The agency is particularly concerned about ensuring the safety performance of belt systems used in the popular series of new compact trucks, utility vehicles, and minivans. The agency's concerns about ensuring adequate safety performance are substantiated by laboratory crash tests of current light trucks and multipurpose passenger vehicles. Each of these issues is addressed in more detail below.

Crash Test Performance of Current Vehicles

To evaluate the safety performance of current light trucks, buses, and multipurpose passenger vehicles, the agency has examined the results of 20 crash tests at 30 mph. In the 30 mph tests, only five of the 20 vehicles tested met both Standard No. 208's head injury criterion (HIC) and chest acceleration criterion at the driver and front right seat passenger positions. (In four other tests, at least one of the test dummies met both the HIC and chest acceleration criteria.) These test results suggest that the agency's concerns about ensuring adequate safety performance of these vehicles are not unfounded.

In addition, the agency has conducted 16 additional tests of those vehicles at 35 mph as a part of its experimental New Car Assessment Program (NCAP). The agency is aware of the fact that NCAP testing exposes vehicles to 36 percent greater crash forces than the 30 mph test. Because of these significantly higher crash forces, the agency has repeatedly stated that the fact that a vehicle did not comply with the Standard No. 208 criteria in an NCAP test should *not* be interpreted as implying that the vehicle would not comply with Standard No. 208 if it were tested in accordance with that Standard; i.e., subjected to a 30 mph frontal barrier crash. Although NCAP data alone would not indicate a basis for the agency's concern, they do, in this case, correlate reasonably well with the 30 mph test data. In the 35 mph tests, only three of the 16 vehicles tested met Standard No. 208's HIC and chest acceleration criteria at both front seating positions. (In four other tests, at least one of the test dummies met both the HIC and chest acceleration criteria.)

In addition to these test results, an analysis of fatalities in crashes of the various vehicle types in frontal impacts supports the agency's concerns about extending dynamic testing requirements

to these additional groups of vehicles. Even though the analysis of fatalities shows that the fatality rates per million registered vehicles were nearly identical in 1985 for passenger cars and light trucks, at 86.9 and 80.4 respectively (see Table 6 of NHTSA's May, 1987 Report to Congress entitled "Light Truck and Van Safety"), some types of light trucks, especially compact pick-up trucks, had higher fatality rates. This rule will ensure adequate safety performance for *all* types of light trucks and multipurpose passenger vehicles, in the same way that Standard No. 208 now ensures adequate safety performance for all types of passenger cars.

Downsizing

Ford agreed with the agency that downsizing "is certainly evident in the new smaller pickup trucks, utility vehicles and minivans," but said that downsizing is "not evident in full-size pickups, MPV's, vans or buses. We do not expect any significant reduction in the size of full-size trucks, buses or MPV's in the foreseeable future." Ford also said that "downsizing has not affected interior geometry and thus, is not a valid rationale for requiring dynamic testing of belts."

The agency agrees with Ford that in their downsizing efforts, manufacturers have attempted to preserve the interior space of their vehicles, while reducing their exterior dimensions. Preserving the interior dimensions of the passenger compartment means that occupants will not be placed closer to instrument panels and other vehicle structures which they could strike in a crash. However, the reduction in *exterior* dimensions in the new lines of compact trucks, utility and van-like vehicles can result in a lessening of the protective crush distance available in those vehicles. The reduction in crush space may mean that occupants may be subject to a higher degree of risk in downsized vehicles, even if the interior dimensions of the vehicle are the same as or similar to the dimensions of the older, full-size vehicle. Thus, the agency believes it is important to require dynamic testing to ensure that safety belts in downsized vehicles will perform adequately.

Ford raised another issue associated, in part, with downsizing, Ford said that because of the differences in vehicle weights, when light trucks and van-like vehicles strike passenger cars, the heavier truck or van-like vehicle will experience lower changes in velocity and thus will likely expose their occupants to less violent crash conditions. NHTSA agrees that this will be particularly true for the heavier vehicles excluded from the dynamic test requirement, which will experience a far lower change in velocity in an impact with a lighter passenger car. However, the change in velocity in impacts between a passenger car and a compact truck or multipurpose passenger vehicle, which represent most of the vehicles covered by today's final rule, will be similar. Thus, the crash test does not represent an overly severe test for lighter trucks and multipurpose passenger vehicles. In addition, the light trucks and van-like vehicles covered by today's rule also are involved in crashes with heavier vehicles and solid objects, such as trees and bridge abutments, which will result in high crash forces for these light vehicles. NHTSA believes that occupants of these light trucks and multipurpose passenger vehicles should be assured of the same level of protection as passenger car occupants in those crashes.

Webbing Tension-Relieving Devices

The April 1985 notice explained that the agency was also concerned about the possible misuse of tension-relieving devices on manual belts. Tension-relieving devices are used to introduce slack in the shoulder portion of a lap/shoulder belt to reduce the pressure of the belt on an occupant or to effect a more comfortable "fit" of the belt to an occupant. The agency believed that the trend toward use of tension-relieving devices was another reason for requiring dynamic tests of safety belts. While recognizing that such devices could make belts more comfortable, thus increasing usage, the agency was also concerned that vehicle occupants may use the tension-relieving device to introduce too much slack in the safety belt and thus reduce its protection capability.

The notice proposed that manufacturers be required to specify in the owner's manuals for their vehicles the maximum amount of slack they recommend introducing into the belt under normal use conditions. Further, the owner's manual would be required to warn that introducing slack beyond the maximum amount specified by the manufacturer could significantly reduce the effectiveness of the belt in a crash. During the agency's dynamic testing of manual belts, the tension-relieving devices would be adjusted so as to introduce the maximum amount of slack specified in the owner's manual.

With the exception of Ford, those manufacturers who commented on the proposal concerning tension-relieving devices supported testing safety belts adjusted so that they have the amount of slack recommended by the manufacturer in the owner's manual. Ford said that requiring any slack to be introduced into the belt system would increase the variability of the dynamic test procedure, and thus reduce the objectivity of the test. Ford said that it might have to eliminate all tension-relieving devices for its safety belts.

The agency's proposed test procedure was intended to accommodate tension-relieving devices since, as noted above, they can increase the comfort of lap/shoulder safety belts, which in turn, should increase usage. At the same time, the proposal would limit the potential reduction in effectiveness for safety belts systems with excessive slack. The agency does not agree that this test procedure need result in the elimination of tension-relieving devices from the marketplace. As mentioned earlier, all the other manufacturers addressing this proposal supported it and did not indicate they would have to remove tension-relieving devices from their belt systems.

In addition, Ford did not provide any data showing that the variability of the tests will increase because of the new requirement. In particular, Ford did not show that injury levels cannot be controlled within the specified injury criteria by testing with the recommended amount of slack, as determined by the manufacturer. A manufacturer has the option of recommending that a very limited amount of slack be introduced into its safety belts to ensure that the injury reduction criteria of Standard No. 208 would be met with the slackened safety belt. The agency notes that as a practical matter, most tension-relievers automatically introduce some slack into the belt for all occupants. Testing without such slack would be unrealistic, since it would not represent how vehicle occupants will wear the safety belt in their vehicles.

CFAS and NTSB raised another objection about the proposed requirement. They objected to the proposal that manual belt systems using tension-relieving devices meet the injury criteria with only the specified amount of slack recommended in the owner's manual. They stated that most owners would not read the instructions in the owner's manual regarding the proper use of the tension-relieving device. They said an occupant could have a false sense of adequate restraint when wearing a belt system adjusted beyond the recommended limit.

The agency's views on allowing the use of tension-relievers in safety belts were detailed in the April 1985 notice. The agency specifically noted the

effectiveness of a safety belt system could be compromised if excessive slack were introduced into the belt. However, the agency recognizes that a belt system must be used to be effective at all. Allowing manufacturers to install tension-relieving devices makes it possible for an occupant to introduce a small amount of slack to relieve shoulder belt pressure or to divert the belt away from the neck. As a result, safety belt use is promoted. This factor should outweigh any loss in effectiveness due to the introduction of a recommended amount of slack in normal use. This is particularly likely in view of the requirement that the belt system, as adjusted, must meet the injury criteria of Standard No. 208 under 30 mph test conditions. Further, the agency believes that the inadvertent introduction of slack into a belt system, which is beyond that for normal use, is unlikely in most current systems.

Feasibility

In questioning the feasibility of meeting the requirements in full-size vehicles, Ford said it knew of no test data indicating that any vehicle in the full-size bus/multipurpose passenger vehicle class can meet the proposed requirements. Ford also said it was unsure whether modifying its vehicles to meet the dynamic test requirement might require it to stiffen the front ends of the vehicles or develop a less stiff front end that "could preclude concurrent compliance to the 212/219 standards." Finally, Ford said that the dynamic test requirement "would be complicated by the broad range of vehicles produced with a variety of interchangeable parts." In particular, it said that high GVWR vehicles have different vehicle and dummy movement than the lower GVWR models from which the high GVWR vehicles are derived. Ford said that these "differences argue against requiring lower GVWR derivatives to meet the injury criteria, because such a requirement may jeopardize the commonality of body components across the truck line and the truck's function and may even adversely affect the occupant protection offered in higher GVWR trucks." Fiat and Toyota also said that it is more difficult to design light trucks and van-like vehicles to conform to a dynamic test requirement and asked the agency to exclude those vehicles from the proposed requirement.

As discussed in the regulatory evaluation for this rulemaking action, the agency has examined test results of light trucks, buses, and multipurpose passenger vehicles at both 30 and 35 mph. Those results show that it is possible for the heavier light trucks and vans to meet the HIC, femur load, and chest acceleration criteria. The test results from the agency's 30 mph tests show that the Ford F-250 pickup truck, with a test weight of 4,866 pounds, and a Ford R-100 pickup truck, with a test weight of 3,163 pounds, met the HIC and chest acceleration requirements. The heaviest vehicle tested in the 30 mph crashes, a Ford P-500 van with a test weight of 5,796 pounds, met the HIC and chest acceleration criteria for the driver; the data for the passenger are not available. The results also show that a Chevrolet K-10 pickup truck with a test weight of 5,401 pounds, met the head injury criterion, and met the chest acceleration criterion for the passenger; the data on the chest acceleration criterion for the driver are not available.

Even at higher speeds, heavier vehicles can meet the dynamic test. For example, NHTSA has examined its NCAP test results and identified two heavier vehicles that met the proposed requirements in 35 mph tests, which involves 36 percent more energy than the 30 mph crash test that will be used in dynamic testing of safety belts. Those vehicles are a Chevrolet C-10 pickup truck, with a test weight of 4,830 pounds, and a Toyota Van-Wagon, with a test weight of 3,616 pounds. Those vehicles were also tested and found to meet Standard No. 212, *Windshield Retention.* Although these results indicate that the requirements are feasible, the agency recognizes that manufacturers will need additional leadtime to develop and produce the necessary design changes that must be made to bring the rest of their vehicles into compliance.

Aggressivity

Ford and MVMA argued that the aggressivity of these vehicles may increase because of design changes required to meet the proposed standard (aggressivity refers to the possibility of increasing the stiffness of a vehicle so that when it strikes another vehicle, the stiffened vehicle inflicts greater damage on the struck vehicle than it would otherwise have done.) However, neither commenter provided data showing that these vehicles would necessarily become more aggressive. NHTSA analysis of existing NCAP data shows that softening rather than stiffening the front structure of a vehicle can improve its crash performance without increasing its aggressivity. (See the results presented in "A Review of the Effects of Belt Systems, Steering Assemblies, and Structural Design on the Safety Performance of Vehicles in the New Car Assessment Program." Hackney and Ellyson, Tenth International Technical Conference on Experimental Safety Vehicles, 1985.)

Effect on Final-Stage Manufacturers and Alterers

Ford and MVMA also raised questions about the effect of dynamic testing of full-size light trucks on final-stage manufacturers and vehicle alterers. Ford said that final-stage manufacturers, such as van converters, who install their own seats in a vehicle could not rely on the incomplete vehicle manufacturer's testing to certify compliance because changes in the seat or belt mounting could invalidate the results of the prior dynamic testing. Likewise, Ford said final-stage manufacturers that add additional equipment to a vehicle could be affected since Ford "would most likely have to recommend stringent limitations on vehicle weight distribution and center of gravity height in order that our crash test results might be approximately representative of the results obtained in tests of the vehicles as completed or altered."

After examining this issue, the agency agrees that dynamic testing of safety belts can pose a problem for final-stage manufacturers and vehicle alterers. NHTSA believes that these parties do not generally have the necessary technical and financial resources to do the vehicle testing or engineering analysis necessary to determine if the safety belts in their altered vehicles meet the dynamic test requirements. Accordingly, this rule limits the effects on these small businesses to the extent possible. NHTSA has obtained information from the Truck Body and Equipment Association which indicates that 90-95 percent of multi-stage manufacturers among its members use vehicles with a GVWR of greater than 8,500 pounds. To reduce the potential problem for final-stage manufacturers and alterers, the agency has decided to limit the applicability of the dynamic test requirement to vehicles with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

As another approach to limiting the effect of the rule on final-stage manufacturers, the agency had proposed to exclude motor homes. Most, if not all, motor homes, with a GVWR of 10,000 pounds or less, are built on a van cutaway chassis, which consists of the front end and chassis of a van. The number of such vehicles is limited. For example, in 1985, approximately 28,000 van cutaway chassis were used for motor homes. No commenter opposed

the proposed exclusion of motor homes and it is thus adopted in the final rule. The agency also proposed to exclude open-body type vehicles, walk-in van-type trucks, vehicles designed exclusively to be sold to the U.S. Postal Service and vehicles carrying chassis-mount campers. These exclusions were also not opposed and are therefore adopted in today's final rule.

Applying the dynamic test requirement to vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less will cover the vast majority of light trucks and multipurpose passenger vehicles. The agency projects that for model year 1992, there will be sales of 4.4 million vehicles, other than passenger cars, with a GVWR of up to 10,000 pounds. Of those vehicles, approximately 3.8 million will have a GVWR of 8,500 pounds or less. The remaining 0.6 million, which represent approximately 14 percent of the total, will have a GVWR in the 8,501 to 10,000 pound range. The dynamic test requirement adopted today should also have a safety benefit for the vehicles in the 8,501 to 10,000 pound GVWR range. Many of these vehicles are derived from vehicles with a GVWR of 8,500 pounds or less. The type of structural and safety belt system changes made to the vehicles covered by today's final rule should also benefit occupants in the derivative vehicles.

Forward Control Vehicles

GM said that it had limited data on the ability of forward control vehicles to meet a dynamic performance test. GM said that, based on engineering studies, it believes that the limited crush space in those vehicles may not make it possible to meet the proposed requirements, at least not by the proposed September 1, 1989 effective date.

In supplemental comments filed with the agency, GM said it was also concerned about the ability of some forward control-type vehicles to meet the proposed requirements. GM explained that those forward control-type vehicles do not meet the agency's definition of forward control, but do have the same or similar limited crush space. (Section 571.3 of the agency's regulations define a forward control vehicle as a vehicle in which at least half the engine is located rearward of the windshield and the steering wheel is located in the front quarter of the vehicle.) GM further explained that two of its three series of light trucks and multipurpose passenger vehicles are forward control vehicles that meet the agency's definition of that term. Those two forward control vehicle series are the G series vans, which are full-size vans, and the P series vehicles, which consists of either a completed walk in van-type vehicle or a chassis that is completed by final-stage manufacturers into walk-in van-type vehicles, such as parcel delivery trucks. In the case of its M series vehicle, which are minivans, GM said that while those vehicles do not meet the agency's definition of forward control, they are forward control *type* vehicles.

GM's submission contained data from two 30 mph crash tests of the M series vehicles using Hybrid III test dummies, in which some of the HIC, chest acceleration and chest deflection readings exceeded the values set in Standard No. 208. GM said that "These type of test results are to be anticipated from vehicle decelerations which do not benefit significantly from energy dissipation due to frontal crush. Further, a greater amount of passenger compartment deformation would be expected in barrier tests of forward control type vehicles, another factor that probably contributed to the observed injury criteria values." GM also noted that the agency's NCAP test results for the M series van also showed the difficulty of meeting Standard No. 208's test requirements in those vehicles. GM suggested that the agency consider establishing other injury criteria levels for forward control type vehicles or excluding those vehicles from the dynamic test requirement. GM also requested NHTSA to consider revising the agency's definition of forward control vehicle.

The agency recognizes that because of the smaller amount of frontal crush space available in forward control and forward control type vehicles, it is more difficult to provide occupant crash protection in frontal crashes of those vehicles. However, there is information showing that those vehicles can be designed to meet the performance requirements of Standard No. 208. In its NCAP program, the agency has tested a 1984 Toyota Van, which is a forward control vehicle, in a 35 mph barrier impact test. In that test, which is a more severe test than the 30 mph barrier impact used in Standard No. 208, both the driver and passenger test dummies did not exceed the HIC and chest acceleration limits set in the standard. The femur loads for the driver did exceed the limit in Standard No. 208, but the passenger's femur loads were well below the limit. NHTSA believes that with the longer leadtime provided by this notice, manufacturers can adopt appropriate changes to enable forward control and forward control type vehicles to meet the performance requirements of Standard No. 208. Therefore, the agency has decided not to exempt forward control or forward control type vehicles from the dynamic test requirement.

Dummy Positioning in Light Trucks

In its comments, Ford expressed concern about whether the test dummy positioning procedure used in passenger cars can be used in light trucks. In particular, Ford said that the more upright seat backs found in some light trucks might prevent use of the current positioning procedure.

To address Ford's concern, the agency recently conducted a test series at its Vehicle Research and Test Center in which the agency examined twenty-four different light trucks, vans, and utility vehicles to identify any problems in positioning a SAE H-point machine, which is a manikin representing the weight and dimensions of a 50th percentile male, and a Hybrid III test dummy in those vehicles. The vehicles chosen represented five different vehicle categories: compact and full-size light trucks, compact multipurpose passenger vehicles, minivans, and full-size vans.

Based on its examination and testing of the vehicles, the agency concluded that the SAE H-point machine could be positioned in 15 of the vehicles without any actual or expected difficulty. In the remaining 9 vehicles, the agency did experience some difficulty in positioning the left leg of the H-point machine. However, NHTSA was successful in ultimately positioning the H-point machine in each of the vehicles. The difficulty was caused by the presence of large engine covers in van-type vehicles and a large transmission tunnel in a full-size truck. In those vehicles, the engine cover or transmission tunnel protruded into the passenger's footspace and reduced the space available for placement of the left leg of the H-point machine. In three vehicles the agency had to remove the left leg of the H-point machine in order to be able to position the manikin in the passenger's seat. As long as the weight represented by the left leg is added to the manikin, the agency does not believe that removal of the left leg will affect the determination of the H-point.

Based on its examination and testing, the agency concluded that the Hybrid III test dummy could be positioned in 15 of the vehicles without any actual or expected difficulty. In nine of the vehicles in which the agency identified potential problems, the agency was able to position a Hybrid III test dummy in

each of those vehicles using the existing positioning procedure. In each of those vehicles, the agency was able to meet the H-point orientation, pelvic angle and head orientation specifications set for the Hybrid III in Standard No. 208. (A copy of the results for the VRTC testing has been placed in the General Reference section of Docket 74-14.)

As a result of the test series, the agency is adopting one change in the positioning procedure for the Hybrid III. During the tests, NHTSA experienced a problem in placing the Hybrid III in vehicles that had very upright seats with non-adjustable seatbacks. In those vehicles, it was necessary to level the head of the test dummy by adjusting the lower neck bracket of the test dummy. The effect of adjusting the neck bracket is to move the head slightly rearward.

To ensure consistency in the placement of the head when positioning the test dummy in a seat with an upright seat with a non-adjustable back, the agency is adopting a sequence of positioning procedures it will follow in adjusting a test dummy in such a seat to level its head. The agency will first adjust the position of the H point within the limits set forth in the standard in an effort to level the head of the test dummy. If that approach is not successful, the agency will then adjust the pelvic angle of the test dummy, again within the limits provided in the standard. If the head is still not level, the agency will then adjust the neck bracket the minimum amount necessary to level the head. By setting out this sequence, the agency expects to reduce the possibility that different testing organizations will position the test dummy in substantially different ways in an effort to level the head of the test dummy.

Petitions for Reconsideration Regarding Hybrid III Positioning

Subsequent to issuance of the July 25, 1986 (51 FR 26688) final rule adopting the use of the Hybrid III test dummy, a number of manufacturers filed petitions for reconsideration. A number of the issues raised in those petitions for reconsideration involved the positioning of the Hybrid III test dummy. NHTSA has decided to address the positioning issues in this notice, since they affect the positioning procedures that can be used in testing light trucks. At a later date, the agency will address the remaining petitions for reconsideration of the final rule on the Hybrid III test dummy.

Use of Different Test Dummies in Different Tests

In its petition for reconsideration, the Motor Vehicle Manufacturers Association (MVMA) asked NHTSA to clarify a statement the agency made on the use of the Hybrid III in non-instrumented testing, such as the comfort and convenience testing. MVMA said that it was unclear from the agency's statement in the preamble to the July 25, 1986 final rule whether either test dummy can be used, at the manufacturer's option, to test for compliance with the comfort and convenience requirements, regardless of which test dummy is used in the barrier crash test.

NHTSA's intention was to allow manufacturers, at their option, to specify the use of either test dummy in the instrumented tests and also to permit manufacturers to specify the use of either test dummy in the non-instrumented tests of the standard. Thus, a manufacturer can specify the use of a Hybrid III in the crash test and a Part 572 Subpart B test dummy in the comfort and convenience tests. The July 1986 rule did, however, make clear that manufacturers will only have the option of using either test dummy until September 1, 1991. At that time, the use of the Hybrid III is mandatory for testing passenger cars to the instrumented and non-instrumented testing requirements of Standard No. 208. (Throughout this preamble, the agency refers to the currently specified September 1, 1991 date for mandatory use of the Hybrid III test dummy for compliance testing of passenger cars. The agency would like to note that this mandatory use date was the subject of numerous petitions for reconsideration. The agency is evaluating those petitions at this time, and will announce its decision on any change to that mandatory use date when it responds to those petitions).

In its petition, MVMA also noted that the latchplate access portion of the comfort and convenience requirement needs to be modified to accommodate the use of the Hybrid III test dummy in that test. To determine whether a car complies with that requirement, the standard uses two reach strings attached to the test dummy. To demonstrate compliance, a manufacturer must show that a stowed latchplate is located within the arcs generated by moving the ends of the strings attached to the test dummy. MVMA said that its "comparison of the physical characteristics of the two dummies indicates that there is a significant difference in the seated attitude of the two dummies and in the respective positions of the two dummies' heads." These differences mean that arcs generated by using the two test dummies are different.

MVMA is correct that the requirements of the standard need to be amended. The positioning of the reach strings shown in Figure 3 of the standard is based on the seated position of a Part 572 Subpart B test dummy. Since the Hybrid III has a slightly different seated position, it is necessary to specify different locations for attaching the reach strings on a Hybrid III test dummy. NHTSA has amended the standard to set out the attachment locations for the latchplate access test strings on a Part 572 Subpart B test dummy in Figure 3A and the attachment locations on a Hybrid III test dummy in Figure 3B.

Use of Different Test Dummies in the Same Test

In its petition for reconsideration, Renault asked the agency to permit manufacturers to specify the use of different test dummies at different seating positions in the same crash test. As discussed above, NHTSA believes that prior to September 1, 1991, manufacturers' should have the option of choosing which of the test dummies they will use to certify that their vehicles meet the requirements of Standard No. 208. Thus, prior to September 1, 1991, a manufacturer may choose to use, for example, a Hybrid III at the driver's seating position and a Part 572 Subpart B test dummy at the passenger's seating position. On or after September 1, 1991, manufacturers certifications must be based on the use of the Hybrid III in the driver's and front right outboard seating position is mandatory in passenger car testing. As discussed below, the agency has decided to permit the use of either the Part 572 Subpart B test dummy or the Hybrid III test dummy for testing in vehicles other than passenger cars after 1991.

Indefinite Use of Part 572 Subpart B Dummy in Non-Passenger Car Testing

Today's final rule marks the first time that NHTSA will check compliance with Standard No. 208 for light trucks and multipurpose passenger vehicles by conducting crash tests of those vehicles using instrumented test dummies positioned in accordance with the detailed requirements of Standard No. 208. Although the agency has placed uninstrumented test dummies in those vehicles for compliance testing under other standards, such as Standard Nos. 212 and 219, those standards do not

contain detailed test dummy positioning requirements. NHTSA recognizes that while manufacturers have conducted numerous crash tests of passenger cars in accordance with Standard No. 208 to certify compliance with the automatic restraint requirements, manufacturers have not conducted as many similar tests with light trucks and multipurpose passenger vehicles to measure the performance of the safety belt systems in those vehicles. In particular, the agency recognizes that manufacturers have had only limited experience in positioning and using Hybrid III test dummies in light trucks and multipurpose passenger vehicles. As discussed in more detail below, the agency recognizes that it can be difficult to position the Hybrid III test dummy in some light trucks and multipurpose passenger vehicles.

To allow manufacturers to gain more experience with the Hybrid III test dummy, NHTSA has decided to permit temporarily the use of either the Part 572 Subpart B or Hybrid III test dummy in Standard No. 208 compliance testing for light trucks and multipurpose passenger vehicles after September 1, 1991. The agency will continue to monitor its own testing experiences and the manufacturers' experiences in using the Hybrid III test dummy in light trucks and multipurpose passenger vehicles. After evaluating experiences with the Hybrid III test dummy, NHTSA will announce in a subsequent rulemaking when the use of that test dummy will become mandatory for compliance testing for light trucks and multipurpose passenger vehicles.

Foot Positioning

Ford said the positioning specification adopted for placement of the driver's left foot and for placement of the passenger test dummy's feet were not clear. In particular, Ford said that the agency should clarify the term "floor surface" to indicate whether the agency is referring to the floor pan or the toeboard. Ford also recommended adopting the same foot positioning requirements for the Hybrid III as are used for the older Part 572 Subpart B test dummy.

Toyota raised a similar issue concerning the placement of the Hybrid III's feet and also recommended that NHTSA use the same foot positioning procedures for the Hybrid III as are used for the Part 572 Subpart B test dummy. In particular, Toyota said that the same procedures should be used for such things as the Hybrid III's foot location when there is a footrest or wheelwell in the passenger compartment. Toyota noted that because of structural differences between the two test dummies, each dummy should continue to have different initial spacing requirements for the knees.

The agency adopted the positioning procedures for the Hybrid III's feet before it had issued the revisions to the feet positioning procedures for the Part 572 Subpart B test dummy. NHTSA agrees with Ford and Toyota that the foot positioning procedures for the two test dummies should be the same. NHTSA has made the necessary changes to the Hybrid III foot positioning procedures to conform them with the procedures used with the Part 572 Subpart B test dummy. So as not to invalidate any design and development work that manufacturers have done using the foot positioning procedures adopted in July 1986, NHTSA is providing that manufacturers have the option of using either positioning procedure until September 1, 1991. In response to Ford's request, NHTSA has also clarified the use of the term "floor surface" in the July 1985 foot positioning procedures to distinguish between the floor pan and the toeboard.

Leg Positioning

In its petition for reconsideration, Toyota noted that there were several slight differences between the leg positioning procedure for the Hybrid III and the Part 572 Subpart B test dummies and requested the agency to resolve those differences. Toyota noted that there is no requirement specifying the initial knee position of the driver's left leg for the Hybrid III. In addition, Toyota noted that there is no requirement that the upper and lower leg centerlines of the driver's right leg fall as nearly as possible in a vertical plane.

The positioning specifications for the Hybrid III currently contain a requirement concerning the initial distance between the knees of the Hybrid III test dummy. Since this specification concerns only the initial placement of the knee, the agency does not believe it is necessary to further define the specific initial placement of the driver's right knee. As emphasized in the July 1986 final rule, the knee spacing requirement for the Hybrid III and the Part 572 Subpart B test dummies are merely initial settings. The agency recognizes that the spacing can change as the test dummy is adjusted to meet the other positioning requirements. Therefore, the agency does not believe it is necessary to further specify the initial placement of the driver's right knee for the Hybrid III test dummy

NHTSA does, however, agree with Toyota that the requirements for the positioning of the leg centerlines for the driver's right leg should be the same for both test dummies. The agency has therefore modified the Hybrid III positioning procedures to provide that the centerlines of the driver's upper and lower leg should fall as nearly as possible in a vertical plane.

Hip Point Placement

The July 1986 final rule provided for positioning the lower torso of the Hybrid III with reference to several dimensions established by positioning the Society of Automotive Engineers (SAE) H-point machine on the vehicle's seat. (The H-point machine used in positioning the Hybrid III is a three-dimensional manikin that represents the weight and dimensions of a 50th percentile male.) In particular, the procedure calls for locating the hip point of the Hybrid III test dummy so that it is within ½ inch vertically and ½ inch longitudinally of a point determined by use of the H-point machine. Ford recommended that the tolerances for the longitudinal location of the dummy's hip point be reduced to ¼ inch to reduce the possibility of test variability. Ford did not, however, provide any evidence indicating that reducing the tolerances would significantly reduce test variability. In the absence of such data, the agency has decided to deny Ford's request.

Pelvic Angle

The July 1986 final rule provided for positioning the pelvic angle of the Hybrid III so that the angle is 22½ degrees plus or minus 2½ degrees. Ford said that the permitted five degree tolerance band is "unnecessarily broad." Ford recommended that the tolerance be reduced to 22 degrees plus or minus one degree.

NHTSA is not adopting Ford's recommended change. The current range of permissible pelvic angles is needed to make it easier to adjust the leg placement of the test dummy. In addition, the current range of permissible angles also makes it easier to rotate the torso of the test dummy to level its head once the test dummy has been placed on the vehicle seat.

Head Positioning

The July 1986 final rule provided that the head shall be positioned so that the head accelerometer mounting platform is horizontal within ½ degree. Ford recommended that the test dummy's head "be positioned 5 inches plus or minus ¼ inch rearward of its hip position to minimize variations in fore-and-aft head positioning." Ford also said that positioning the head in this manner

is "consistent with the typical seat back angle in cars and the 22 degree pelvic angle, and will keep the head accelerometer mounting platform essentially horizontal."

The agency has successfully used the current head positioning procedures to obtain a consistent positioning of the Hybrid III's head relative to different vehicle interiors. As discussed earlier in this notice, the agency has decided to adopt a minor change in the positioning requirements to address the minor difficulty the agency has experienced in positioning the Hybrid III in an upright vehicle seat with a non-adjustable seat back. Since the current procedure, with the minor change adopted in this notice, has proved to consistently position the head, the agency is not adopting Ford's suggested alternative.

Torso Positioning

The July 1986 final rule provided for positioning the upper torso of the Hybrid III so that it rests against the seat back. Toyota said that it has attempted to position a Hybrid III test dummy using this procedure and "found that the head position of the dummy is not consistent and is significantly influenced by the force applied to the upper torso when positioning the dummy." Toyota requested the agency to set a specific load to be applied to the upper torso of the Hybrid III while positioning the test dummy.

When NHTSA adopted the final rule on the Hybrid III test dummy, the agency consciously decided not to specify the step-by-step procedure that must be used to reach the prescribed final position. Instead, the Hybrid III dummy positioning specifications set forth the final position in which the test dummy should be before the crash test is conducted, such as having the head level and the pelvic angle adjusted within a specified range. The agency believes that the test dummy will be properly positioned when these procedures are followed. Consequently, there is no need for this rule to establish a specific load to be used in positioning the upper torso of the Hybrid III.

Hand Placement

The July 1986 final rule called for positioning the hands of the Hybrid III test dummy so that they are in contact with the steering wheel and attaching the thumbs to the steering wheel with adhesive tape with a breakaway force of between 2 to 5 pounds. Toyota said that the standard does not provide a procedure for measuring the breakaway force. In addition, Toyota said that the positioning procedure for the existing Part 572 Subpart B test dummy does not call for taping the thumbs to the steering wheel rim. It requested the agency to drop the taping requirement for the Hybrid III. Ford suggested using the term "masking tape" rather than "adhesive tape." Ford said that the term "adhesive tape" is "commonly used to mean medical cloth or plastic tape that would not meet the 2 to 5 pound breakaway force specification."

NHTSA has used a procedure of lightly taping the thumbs of the Hybrid III to the steering wheel in its crash tests. The agency has found that this practice is helpful in maintaining the test dummy's hands in place on the steering wheel as technicians make adjustments to the position of the test dummy. The tape is also helpful in keeping the test dummy's hands on the steering wheel as the vehicle is accelerated toward the barrier in a crash test.

The agency has not previously specified a test to measure breakaway force of the tape since the tape is used as a convenience feature to reduce the number of times a technician must reposition the hands as he or she makes final minor adjustments to the test dummies' positions prior to a crash test. NHTSA believes that a simple means of determining whether the tape meets the 2 to 5 pound breakaway force requirement is simply to provide that when the test dummy's hand is moved upward with a force of not less than 2 pounds and not more than 5 pounds, the tape must break away. The agency does not believe it is necessary to specify whether the tape should be masking or adhesive tape, as long as the tape can meet the breakaway requirement. Thus, the agency has deleted the word "adhesive".

Leadtime

In commenting on the leadtime needed to meet the proposed requirements, Ford said that it would need to conduct pre program design studies lasting up to 12 months on each of its four basic truck lines. It said the studies would be needed to determine how to comply with the proposed requirements without "jeopardizing the intended functions of these trucks, increasing their aggressivity, or threatening the existence of the many small final-stage manufacturers that use our trucks as the base for their products." Ford said that these pre-program studies would have to be completed before it could begin normal programs, taking up to 54 months, to make the necessary changes, which could involve changes to the front end structure, steering system, chassis, instrument panel, engine mounting and seating systems. Ford also said it "does not have the personnel or engineering facilities to make major changes in all of its truck lines at the same time. We can accomplish only one major change truck program in any year." Ford recommended indefinite deferral of a dynamic test requirement for full-size light trucks until the practicability and safety need is established. In the case of compact light trucks, Ford requested that the effective date be delayed until September 1, 1991.

The agency finds good cause for providing additional leadtime. As discussed previously, the agency's test data show that while it is practicable for light trucks and multipurpose passenger vehicles to meet a dynamic test requirement, even in 35 mph barrier impacts, there are a large number of vehicles that must be modified to meet the requirement. Some vehicles, in particular van-type vehicles, may need more extensive structural modifications to meet the dynamic test requirement. Based on the agency's review of the test data, NHTSA believes that in some cases, extensive vehicle modifications may not be necessary. The addition of pre-tensioners to the safety belts (devices that sense a crash and remove slack from the belt system) and additional vehicle padding may enable those vehicles to meet the dynamic test requirement at 30 mph. To address the redesign and manpower issues Ford raised, the agency has decided to adopt a September 1, 1991 effective date. The agency recognizes that some vehicles will be able to comply before that date. However, the additional leadtime is necessary to ensure that all vehicles can be modified by the September 1, 1991 date.

Other Issues Raised by the Commenters

Exclusions From Standard Nos. 203 and 204

Volkswagen suggested that vehicles equipped with dynamically tested manual belts be excluded from Standard Nos. 203, *Impact Protection for the Driver from the Steering Control Systems,* and 204, *Steering Control Rearward Displacement.* The agency does not believe such an exclusion would be appropriate because both those standards have been shown to provide substantial protection to unbelted and belted drivers.

Latching Procedure in Standard No. 208

Mercedes-Benz asked that Standard No. 208 be modified to include a test procedure for latching and adjusting a manual safety belt prior to the belt being

dynamically tested. NHTSA agrees that Standard No. 208 should include such a procedure and has already adopted such a procedure for dynamically-tested manual belts in passenger cars. Subsequent to issuance of that rule, Ford petitioned for reconsideration of the belt latching test procedure. Ford noted that the safety belt positioning procedure specifies applying a 2 to 4 pound tension load to the lap belt of a lap/shoulder belt, but does not specify how the load is to be applied or how the tension is to be measured. Ford asked the agency to clarify the procedure, particularly with regard to whether the load is to be applied to the lap portion of the belt or whether an increasing load is to be placed on the shoulder portion of the belt until the required amount of tension has been reached in the lap portion of the belt.

NHTSA does not believe that the area of application of the belt tension load should have a significant effect on the subsequent performance of the belt in a dynamic test. However, to promote uniformity in application of the load, the agency, on September 5, 1986 (51 FR 31765), amended the standard to provide that the load will be applied to the shoulder portion of the belt adjacent to the latchplate of the belt. If the safety belt system is equipped with two retractors (one for the lap belt and one for the upper torso belt), then the tension load will be applied at the point the lap belt enters the retractor, since the separate lap belt retractor effectively controls the tension in the lap portion of a lap/shoulder belt. The amount of tension will also be measured at the location where the load is applied. Finally, the agency has amended the standard to provide that after the tension load has been applied, the shoulder belt will be positioned flat on the test dummy's shoulder. This will ensure that if the belt is twisted during the application of the tension load, it will be correctly positioned prior to the crash test. This final rule incorporates the same latching procedure for safety belts in light trucks and van-like vehicles.

Revisions to Standard No. 209

The notice proposed to exclude dynamically tested belts from the static laboratory strength tests for safety belt assemblies set forth in S4.4 of Standard No. 209. Ford asked that such belts be excluded from the remaining requirements of Standard No. 209 as well.

In adopting the dynamic test requirement for lap/shoulder belts in passenger cars, NHTSA agreed that an additional exclusion from some performance requirements of Standard No. 209 is appropriate. The agency noted that the webbing of automatic belts is currently excluded from the elongation and other belt webbing and attachment hardware requirements of Standard No. 209, since those belts have to meet the injury protection criteria of Standard No. 208 during a crash. For dynamically-tested manual belts in passenger cars, NHTSA believed that an exclusion from the webbing width, strength and elongation requirements (sections 4.2(a)–(c) is also appropriate, since these belts will also have to meet the injury protection requirements of Standard No. 208. The agency believes that for those same reasons, dynamically-tested safety belts in light trucks and multipurpose passenger vehicles should also be excluded from those requirements of Standard No. 209.

The agency does not believe that manual belts should be excluded from the other requirements in Standard No. 209. For example, the requirements on buckle release force should continue to apply, since manual safety belts, unlike automatic belts, must be buckled every time they are used. As with retractors in automatic belts, retractors in dynamically tested manual belts will still have to meet Standard No. 209's performance requirements.

Subsequent to issuance of the final rule on the dynamic testing of manual safety belts in passenger cars, several organizations petitioned for reconsideration of the exclusion of dynamically-tested safety belts in passenger cars from the requirements of Standard No. 209. The agency is still in the process of reviewing those petitions and will respond to them in a later notice. Any changes made for dynamically-tested belts in passenger cars will also be made for dynamically-tested belts in light trucks and multipurpose passenger vehicles.

Revisions to Standard No. 210

The April 1985 notice proposed that dynamically tested manual belts would not have to meet the location requirements set forth in Standard No. 210, *Seat Belt Assembly Anchorages*. Volkswagen suggested that dynamically tested belts be completely excluded from Standard No. 210; it also recommended that Standard No. 210 be harmonized with Economic Commission for Europe (ECE) Regulation No. 14. AMC and Renault suggested using the "out-of-vehicle" dynamic test procedure for manual belts contained in ECE Regulation No. 16, instead of the proposed barrier crash test in Standard No. 208.

As explained in the final rule adopting the dynamic test requirement for manual safety belts in passenger cars, the agency does not believe that the "out-of-vehicle" laboratory bench test of ECE Regulation No. 16 should be allowed as a substitute for a dynamic vehicle crash test. The protection provided by safety belts depends on the performance of the safety belts themselves, in conjunction with the structural characteristics and interior design of the vehicle. The best way to measure the performance of the safety belt/vehicle combination is through a vehicle crash test.

The agency has recently proposed revisions to Standard No. 210 to harmonize it with ECE Regulation No. 14; therefore the commenters' suggestions concerning harmonization and exclusion of dynamically tested safety belts from the other requirements of Standard No. 210 will be considered during that rulemaking. At the present time, the agency is adopting only the proposed exclusion of anchorages for dynamically tested safety belts from the location requirements, which was not opposed by any commenter.

Belt Labeling

Ford objected to the proposal that dynamically tested belts have a label indicating that they may be installed only at the front outboard seating positions of certain vehicles. Ford said that it is unlikely that anyone would attempt to install a lap/shoulder belt in any vehicle other than the model for which it was designed. The agency does not agree and has already adopted a belt labeling requirement for dynamically-tested safety belts in passenger cars.

In the final rule on dynamically testing manual safety belts in passenger cars, the agency explained that it believes that care must be taken to distinguish dynamically tested belt systems from other systems, since misapplication of a belt in a vehicle designed for use with a specific dynamically tested belt could pose a risk of injury. If there is a label on the belt itself, a person making the installation will be aware that the belt should be installed only in certain vehicles.

Subsequent to issuance of the passenger car final rule, Ford petitioned for reconsideration of the belt labeling requirement. Ford said that the required label does not specifically identify the safety belt as a dynamically-tested belt and the label does not suggest that the belt may be safely used only in specific vehicles at specific seats. Ford asked the agency to rescind the labeling

requirement Ford also suggested that the intent of S4.6(b) could be accomplished by requiring the safety belt installation instruction required by S4.1(k) of the standard to specify both the vehicles for which the belt system is to be used and the specific type of seating position for which it is intended.

As explained in the September 5, 1986 notice responding to Ford's petition for reconsideration, NHTSA believes that it is important that a dynamically-tested safety belt be labeled to ensure that it is installed only in the type of vehicle for which it is intended. NHTSA agreed with Ford that providing the information in the installation instructions would address most of the problem of possible misuse. However, there still may be instances where the instruction would be lost. In addition, the installation instruction requirements apply only to aftermarket belts. There can be situations where a safety belt may be taken from one vehicle and transferred to another. Given these considerations and the importance of alerting motorists that a safety belt may have been designed for use in one particular make and model vehicle, the agency decided to retain the labeling requirement.

In response to Ford's comment, NHTSA believes that the statement appearing on the label should be changed to require a manufacturer to specify the specific vehicles for which the safety belt is intended and the specific seating position (e.g., "right front") in which it can be used. In today's final rule, NHTSA is adopting the same belt labeling requirements for light trucks and multipurpose passenger vehicles that it has previously applied to passenger car safety belts.

Cost and Benefits

NHTSA has examined the impacts of this rulemaking action and determined that the action is not major within the meaning of Executive Order 12291. It is, however, significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a final regulatory evaluation, which analyzes in detail the economic and other impacts of this rulemaking action. This regulatory evaluation has been placed in Docket No. 74–14; Notice 53. Any interested person may obtain a copy of this regulatory evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

To briefly summarize the regulatory evaluation, the agency estimates that the dynamic test requirement for manual safety belts will increase testing costs by about $8,500 per test. This cost estimate assumes that manufacturers can conduct the new test as a part of its current crash testing to meet other standards. The additional costs are associated with instrumentation of the dummies. Ford said these tests cannot be "piggy-backed" with those done for FMVSS 212, 219, and 301. Ford stated, "we try to test 'worst case' conditions so that when we pass, we have confidence that all vehicles will pass. But the 'worst case' conditions for one standard may be the 'best case' for another standard." The agency recognizes that it is possible that a worst case test for one standard may not be the same for another standard for a particular vehicle. However, it is also unlikely that for each of the vehicle types covered by this standard it will not be possible to conduct testing to multiple standards, including Standard No. 208, in one crash test.

The agency cannot estimate the design costs associated with meeting the performance requirements adopted in this final rule As discussed earlier in this notice, some existing vehicle designs currently meet the requirements adopted today. In addition, other vehicles may be able to meet the requirements by adopting different safety belt webbing or retractors, which are relatively minor changes. In other cases, it may be necessary to make structural changes to the vehicle as well to enable the vehicle to meet the performance requirements of the standard.

The agency believes that the rule's requirements will improve the overall level of safety performance provided by light trucks and multipurpose passenger vehicles. As discussed earlier, agency crash testing has shown that the instrumented test dummies in some of these vehicles record comparatively high injury readings in 30 and 35 mph crashes. Today's final rule will ensure that the belt systems and vehicle structure are designed to work together to reduce potential injuries.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. Today's final rule will have an impact on a large number of small businesses. The potential significance of that impact will differ depending on the type of vehicles currently being used by those businesses and on what actions those manufacturers take in response to today's final rule. The agency has tried to minimize the impact on small businesses, while still improving the safety of the vehicles covered by the amendments adopted today. The impacts on small businesses are discussed briefly below and in more detail in the agency's final regulatory evaluation, which includes a full regulatory flexibility analysis. Persons interested in the regulatory flexibility analysis are urged to review the regulatory evaluation that has been placed in the docket for this final rule.

Few, if any, light truck and multipurpose passenger vehicle manufacturers would qualify as small entities. There is, however, a specialized class of businesses involved in the final stage manufacturing of a vehicle manufactured in two or more stages or involved in the conversion or alteration of new vehicles that would be affected by the restraint system requirements adopted today. Under NHTSA's regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. In addition, a business that modifies or converts a new vehicle prior to its first sale to a consumer is considered a vehicle alterer under the agency's regulations. As an alterer, the business is required to certify that the vehicle, as altered, continues to comply with all applicable Federal motor vehicle safety standards. For example, a business that installs a body on a new truck chassis or places new seats and other equipment in a van must certify that the vehicle, as altered, continues to comply with all the agency's safety standards.

As discussed earlier in this notice, the agency has reduced the potential impact on those small businesses by limiting the application of today's final rule. In many instances, businesses involved in the final stage manufacturing of a vehicle are adding substantial items of heavy work-performing equipment to a truck chassis. According to the Truck Body and Equipment Association, which represents many final stage manufacturers and vehicle alterers, approximately 90–95 percent of the chassis used by their members involved in final stage manufacturing have a GVWR greater than 8,500 pounds and, in addition, would have an unloaded vehicle weight greater than 5,500 pounds when they are completed. Thus, they would not be covered by the requirement adopted today.

In the case of vehicles that will be covered by the dynamic test requirement, converters and final-stage manufacturers have a number of different alternatives. The manufacturers of the truck or van chassis used by final stage manufacturers are required to provide

information on what center of gravity, weight, and other limitations must be followed for the vehicle to remain in compliance with all the agency's safety standards. Final stage manufacturers and converters can stay within the limitations prescribed by the original chassis manufacturer and thus the final vehicle will continue to comply. They may also choose to finish the vehicle outside of the limits imposed by the original manufacturer and do the necessary testing or engineering analysis to show that the vehicle still complies with the dynamic test requirement. Finally, in those instances where alterers or final stage manufacturers have used a vehicle with a GVWR of 8,500 pounds or less or a vehicle with an unloaded vehicle weight of 5,500 pounds or less, they may now choose to switch to vehicles with a greater GVWR or to add more weight to the vehicle so that it is not covered by the requirements adopted today.

Small organizations and governmental units should not be significantly affected. Those entities may be purchasing some altered or multi-stage manufactured vehicles. However, as discussed above, the agency's decision to limit the applicability of the final rule will minimize the cost impact on those vehicles.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction

The labeling requirements for dynamically-tested safety belts are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. OMB has approved the requirement that dynamically-tested safety belts for use in passenger cars be labeled (OMB No. 2127-0512), but has not approved the labeling requirement for dynamically-tested safety belts for use in light trucks and MPV's. Accordingly, these labeling requirements have been submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the **Federal Register** when OMB announces its decision on this information collection.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, §§ 571.208 and 571.209 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.2 is revised to read as follows:

S4.2 *Trucks and multipurpose passenger vehicles with GVWR of 10,000 pounds or less.*

S4.2.1 *Trucks and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less, manufactured on or after January 1, 1976 and before September 1, 1991.* Each truck and multipurpose passenger vehicle, with a gross vehicle weight rating of 10,000 pounds or less, manufactured before September 1, 1991, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that forward control vehicles manufactured prior to September 1, 1981, convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2.

S4.2.1.1 *First option—complete automatic protection system.* The vehicle shall meet the crash protection requirements of S5 by means that require no action by vehicle occupants.

S4.2.1.2 *Second option—belt system.* The vehicle shall have seat belt assemblies that conform to Standard 209 installed as follows:

(a) A Type 1 or Type 2 seat belt assembly shall be installed for each designated seating position in convertibles, open-body type vehicles, and walk-in van-type trucks.

(b) In all vehicles except those for which requirements are specified in S4.2.1.2(a), a Type 2 seat belt assembly shall be installed for each outboard designated seating position that includes the windshield header within the head impact area, and a Type 1 or Type 2 seat belt assembly shall be installed for each other designated seating position.

S4.2.2 *Trucks and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991.* Each truck and multipurpose passenger vehicle, with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2. Each Type 2 seat belt assembly installed in a front outboard designated seating position in accordance with S4.1.2.3 shall meet the requirements of S4.6.

S4.2.3 *Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with either a GVWR of more than 8,500 pounds but not greater than 10,000 pounds or with an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less.* Each truck and multipurpose passenger vehicle manufactured on or after September 1, 1991, that has either a gross vehicle weight rating which is greater than 8,500 pounds, but not greater than 10,000 pounds, or has an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2.

3. S4.6 is amended by revising S4.6.2 and adding S4.6.3 to read as follows:

S4.6 *Dynamic testing of manual belt systems.*

S4.6.1 * * *

S4.6.2 Each truck and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded weight of less than 5,500 pounds that is manufactured on or after September 1, 1991, and is equipped with a Type 2 seat belt assembly at a front outboard designated seating position pursuant to S4.1.2.3 shall meet the frontal crash protection requirements of S5.1 at those designated seating positions with a test dummy restrained by a Type 2 seat belt assembly that has been adjusted in accordance with S7.4.2. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.6.3 A Type 2 seat belt assembly subject to the requirements of S4.6.1 or S4.6.2 of this standard does not have to meet the requirements of S4.2(a)–(c) and S4.4 of Standard No. 209 (49 CFR 571.209) of this part.

4. S5.1 is revised to read as follows:

S5. *Occupant crash protection requirements.*

S5.1 Passenger cars manufactured before September 1, 1991, and all other vehicles subject to S5.1 shall comply with either S5.1(a) or S5.1(b), at the manufacturer's option. Passenger cars manufactured on or after September 1, 1991, shall comply with S5.1(b).

* * * * *

5. S7.4.4 is revised to read as follows:

S7.4 *Seat belt comfort and convenience.*

* * * * *

S7.4.4 *Latchplate access.* Any seat belt assembly latchplate that is located outboard of a front outboard seating position in accordance with S4.1.2 shall also be located within the outboard reach envelope of either the outboard arm or the inboard arm described in S10.6 of this standard and, in the case of a Part 572 Subpart B test dummy, Figure 3A of this standard, or, in the case of a Part 572 Subpart E test dummy, Figure 3B of this standard, when the latchplate is in its normal stowed position. There shall be sufficient clearance between the vehicle seat and the side of the vehicle interior to allow the test block defined in Figure 4 of this standard unhindered transit to the latchplate or buckle.

* * * * *

6. S10.6.1 is revised to read as follows:

S10.6 * * *

S10.6.1 *Driver's position.* Move the upper and the lower arms of the test dummy at the driver's position to their fully outstretched position in the lowest possible orientation. Push each arm rearward permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the test dummy's thumbs over the steering wheel rim and position the upper and lower arm centerlines as close as possible in a vertical plane without inducing torso movement. The thumbs shall be over the steering wheel rim and are lightly taped to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 2 pounds and not more than 5 pounds, the tape shall release the hand from the steering wheel rim.

* * * * *

7. S11 is amended by revising S11.1, S11.3.1, S11.5, and S11.6, to read as follows:

S11 *Positioning procedure for the Part 572 Subpart E Test Dummy.*

* * * * *

S11.1 *Head.* The transverse instrumentation platform of the head shall be horizontal within ½ degree. To level the head of the test dummy in vehicles with upright seats with non-adjustable backs, the following sequences must be followed. First adjust the position of the H point within the limits set forth in S11.4.3.1 to level the transverse instrumentation platform of the head of the test dummy. If the transverse instrumentation platform of the head is still not level, then adjust the pelvic angle of the test dummy within the limits provided in S11.4.3.2 of the standard. If the transverse instrumentation platform of the head is still not level, then adjust the neck bracket of the test dummy the minimum amount necessary to ensure that the transverse instrumentation platform of the head is horizontal within ½ degree.

* * * * *

S11.3 *Hands.*

S11.3.1 The palms of the driver test dummy shall be in contact with the outer part of the steering wheel rim at the rim's horizontal centerline. The thumbs shall be over the steering wheel rim and shall be lightly taped to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 2 pounds and not more than 5 pounds, the tape shall release the hand from the steering wheel rim.

* * * * *

S11.5 *Legs.*

S11.5.1 The legs of the driver and passenger test dummy shall be placed as provided in S11.5.2 or, at the option of the vehicle manufacturer until September 1, 1991, as provided in S10.1.1 for the driver and S10.1.2 for the passenger, except that the initial distance between the outboard knee clevis flange surfaces shall be 10.6 inches for both the driver and the passenger rather than 14½ inches as specified in S10.1.1(a) for the driver and 11¾ inches as specified in S10.1.2.1(a) and S10.1.2.2(a) for the passenger.

S11.5.2 The upper legs of the driver and passenger test dummies shall rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces shall be 10.6 inches. To the extent practicable, the left leg of the driver dummy and both legs of the passenger dummy shall be in vertical longitudinal planes. To the extent practicable, the right leg of the driver dummy shall be in a vertical plane. Final adjustment to accommodate placement of feet in accordance with S11.6 for various passenger compartment configurations is permitted.

S11.6 *Feet.*

S11.6.1 The feet of the driver test dummy shall be placed as required by S11.6.2 or, at the option of the vehicle manufacturer until September 1, 1991, as provided in S10.1.1. The feet of the passenger test dummy shall be placed as required by S11.6.3 or, at the option of the vehicle manufacturer until September 1, 1991, as provided in S10.1.2.

S11.6.2 The right foot of the driver test dummy shall rest on the undepressed accelerator with the rearmost point of the heel on the floor surface in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, it shall be positioned perpendicular to the tibia and placed as far forward as possible in the direction of the centerline of the pedal with the rearmost point of the heel resting on the floor surface. The heel of the left foot shall be placed as far forward as possible and shall rest on the floor pan. The left foot shall be positioned as flat as possible on the toeboard. The longitudinal centerline of the left foot shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

S11.6.3 The heels of both feet of the passenger test dummy shall be placed as far forward as possible and shall rest on the floor pan. Both feet shall be positioned as flat as possible on the toeboard. The longitudinal centerline of the feet shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

* * * * *

8. Figure 3 following the text of § 571.208 is removed and new Figures 3a and 3b are inserted in its place, appearing as follows:

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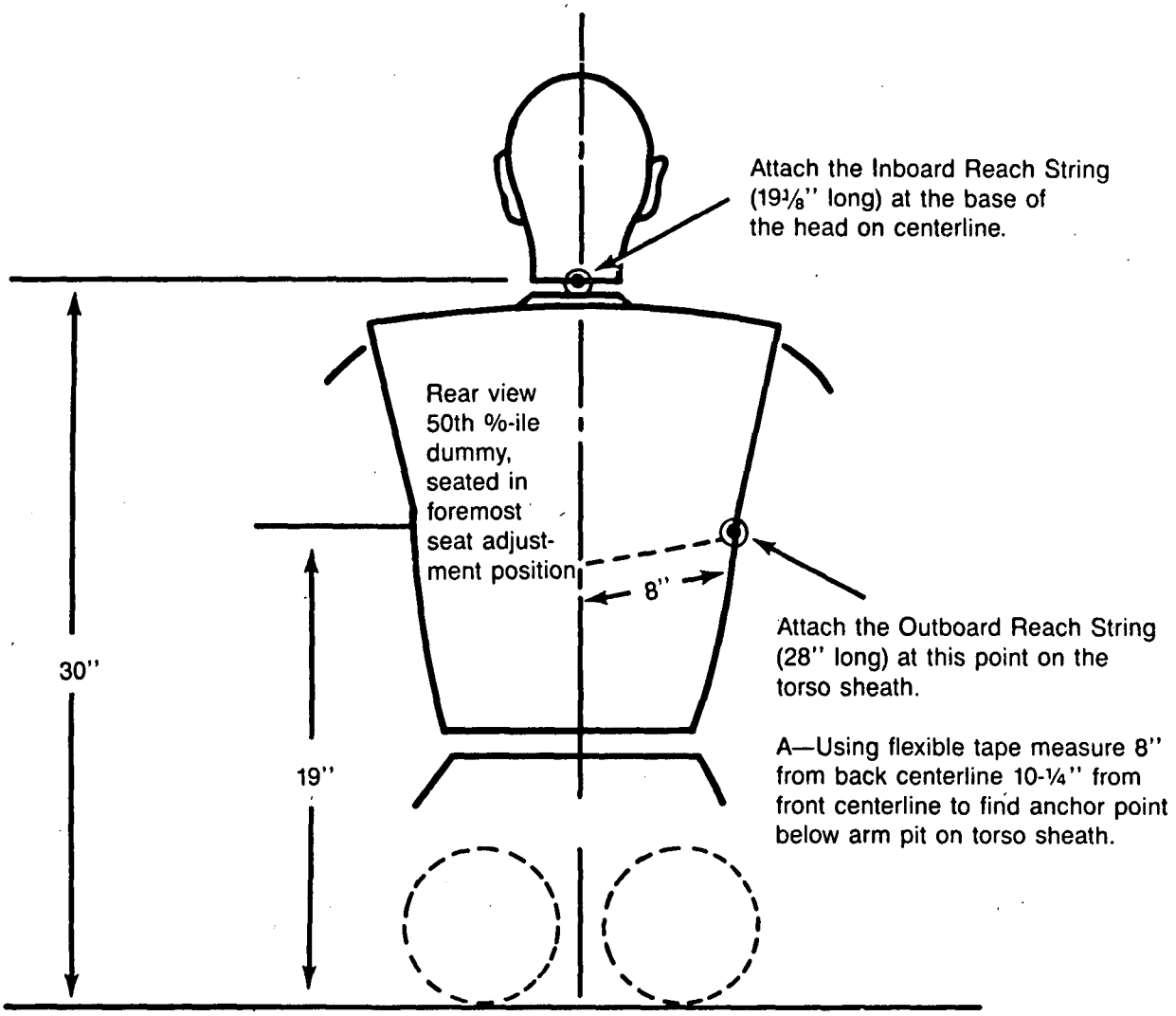

Figure 3a. — Location of Anchoring Points for Latchplate Reach Limiting Chains or Strings to Test for Latchplate Accessibility Using Subpart B Test Device

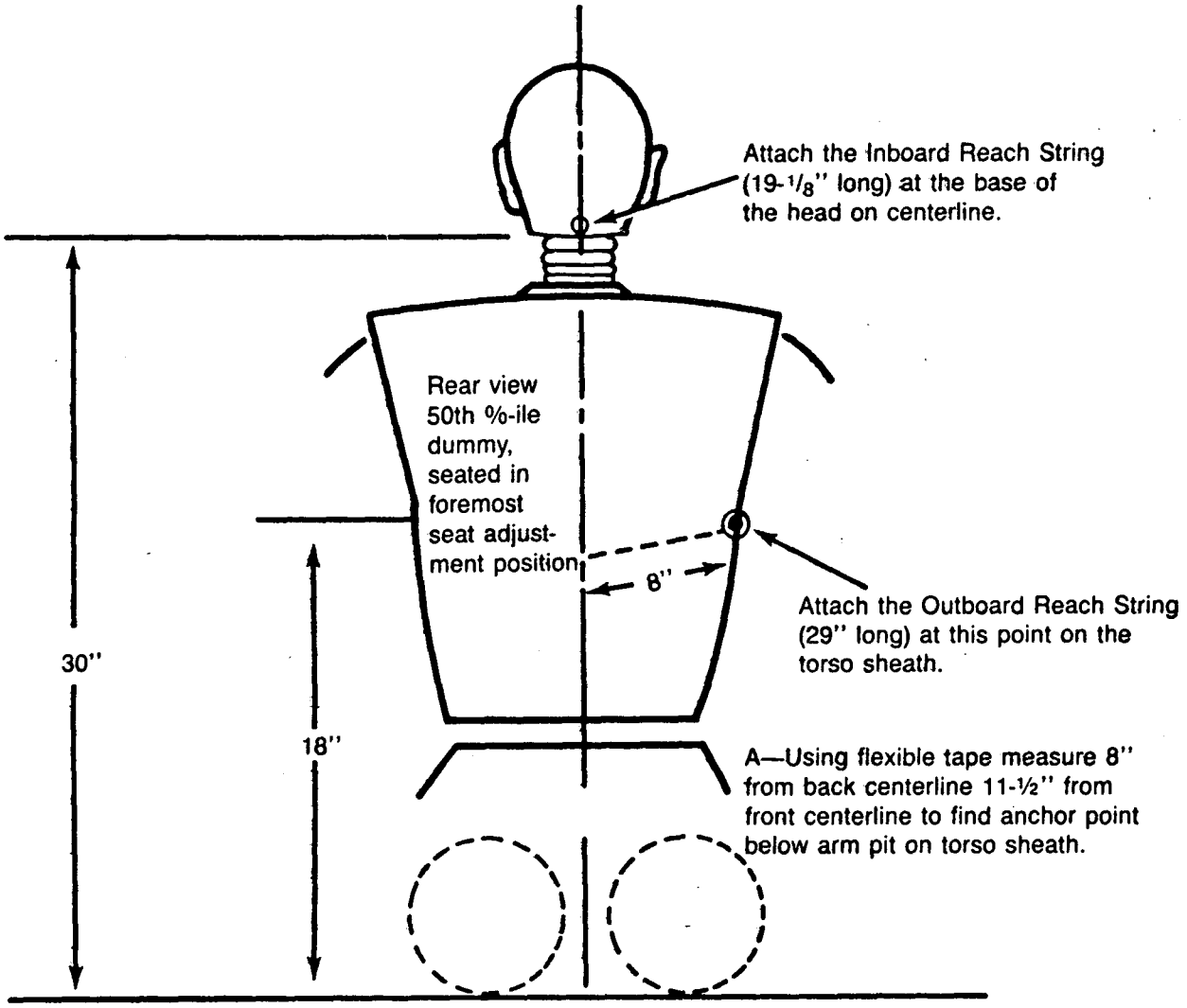

Figure 3b. — Location of Anchoring Points for Latchplate Reach Limiting Chains or Strings to Test for Latchplate Accessibility Using Subpart E Test Device

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§ 571.209 [Amended]

9. S4.6 of § 571.209 is revised to read as follows:

S4.6 *Manual belts subject to crash protection requirements of Standard No. 208.*

(a) A seat belt assembly subject to the requirements of S4.6 of Standard No. 208 (49 CFR 571.208) does not have to meet the requirements of S4.2(a)–(c) and S4.4 of this standard.

(b) A seat belt assembly that meets the requirements of S4.6 of Standard No. 208 (49 CFR 571.208) shall be permanently and legibly marked or labeled with the following statement:

This dynamically-tested seat belt assembly is for use only in (insert specific seating position(s), e.g., "front right") in (insert specific vehicle make(s) and model(s)).

Issued on: November 18, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-26930 Filed 11-18-87; 3:50 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 61096-7191]

Endangered Fish and Wildlife; Approaching Humpback Whales in Hawaiian Waters

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule with request for comment.

SUMMARY: NOAA is issuing an interim rule that prohibits aircraft from approaching closer than 1,000 feet from a humpback whale, and prohibits vessels or people from approaching closer than 100 yards from a whale except in cow/calf areas where the approach limit for persons and vessels is 300 yards. Because additional restrictions on cow/calf areas have been added in response to comments received on the proposed rule, NOAA is requesting further comment. This rule applies to all persons and vessels operating within 200 miles of the Hawaiian Islands. This action is necessary to reduce the level of disturbance experienced by humpback whales from vessel traffic.

DATES: The interim rule becomes effective on December 23, 1987. The public comment period on the addition of restrictions in areas designated as cow/calf waters will end on January 22, 1988.

ADDRESS: E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone: (213) 514–6201.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822, Telephone: (808) 955–8831; H.E. Witham, Senior Resident Agent, Enforcement Division, Southwest Region, National Marine Fisheries Service, P.O. Box 50246, Honolulu, Hawaii 96850, Telephone: (808) 541–2727; or James H. Lecky, Wildlife Biologist, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, Telephone: (213) 514–6664.

SUPPLEMENTARY INFORMATION:

Background

In 1970, the humpback whale was designated as endangered under the Endangered Species and Conservation Act of 1969 (since superseded by the Endangered Species Act of 1973 (ESA)). In 1979, NMFS published a "Notice of Interpretation" (NOI) to inform the public of activities that could be interpreted as harassment of whales. The NOI contained guidelines for approaching whales and proper conduct of vessel operators when following or watching whales. The guidelines were not effective because vessel operators frequently approached nearer than the prescribed distance to view whales.

Since guidelines do not have the same legal standing as regulations, NMFS has had difficulty prosecuting violators. Before NMFS can prosecute an individual who fails to adhere to the guidelines, it must be demonstrated that an approach closer than the prescribed distance resulted in a take as defined under the ESA (i.e., harassment). Demonstrating conclusively that a close approach resulted in harassment of a whale is difficult. Consequently, most who fail to adhere to the guidelines are not prosecuted, even though collectively their actions are contributing to the displacement of whales from nearshore habitat.

To provide better protection of the whales and to minimize the effects of increasing vessel traffic on the whales, NMFS has determined that a need for regulations exists. On November 24, 1986, NMFS published a proposed rule governing approach to humpback whales in Hawaiian waters (51 FR 42271). This proposal prohibited vessels or people from approaching whales closer than 100 yards and aircraft from approaching within 1,000 feet of any humpback whale.

The proposed rule differed from the guidelines since it did not contain cow/calf areas (also called calving/breeding areas). Several commentors, including the Marine Mammal Commission, viewed this approach as relaxing the protective standards established by the guidelines. In response, NMFS reviewed available information on the effects of vessel traffic on whales and on the distribution of whales in Hawaiian waters and, based on results of this review, decided to incorporate cow/calf areas in the rule.

Although Forestell (1985) did not find distinct cow/calf areas during aerial surveys of humpback whale distribution, he did find evidence that humpback whales were being displaced by increased vessel traffic. During aerial surveys of humpback whales in 1976/77, Herman et al. (1980) noticed few whale sightings in the vicinity of Lahaina.

This was attributed to vessel traffic that was centered in Lahaina. In 1985, Forestell discovered that a similar situation had developed in Maaleae Bay near Keawakapu, Maui, and attributed the few sightings to increased vessel traffic in the area associated with the construction of a boat launching ramp at Keawakapu in 1983.

Researchers working from small boats off south and west Maui commonly note resting cows with calves (Glockner-Ferrari and Ferrari 1985, 1987). Resting behavior is presumed to occur in nearshore waters to provide calves with protection from offshore predators (large sharks and toothed cetaceans) and to minimize energy expenditure of postpartum, lactating females and nursing calves. Glockner-Ferrari and Ferrari (1985) reported a decreasing percentage of cow/calf pairs found near shore off west Maui. In early 1987, they reported that the trend was continuing.

NMFS believes that displacement of cow/calf pairs may result in both increased stress and increased susceptibility to predation. Although there is little information on the effects of stress on cetaceans, inferences may be drawn from information on other mammalian taxa. Adverse effects of stress demonstrated by some ungulate (hoofed animals) populations include weight loss, susceptibility to predation, and reduced reproduction (Geist 1971; Wallach and Boever 1983).

It is questionable whether all species of whales can avoid the effects of stress by becoming accustomed to the presence of increased vessel traffic.

Based on 25 years of observing whales in Cape Cod waters, Watkins (1986) believes that humpbacks have become accustomed to vessel traffic and now are attracted by vessel noise rather than repelled as they had been in the early years of his studies. Watkins also documents that other species have not become accustomed to vessel traffic over the same time period and are still repelled by vessel noise. Jones and Swartz (1984) indicate that gray whales are able to habituate to the physical presence, noise, and activities of whale watching vessels and skiffs in San Ignacio Lagoon, but gray whales abandoned Guerro Negro Lagoon during the years heavy barge traffic supported a salt production operation in that lagoon.

There are differing opinions concerning the effects of human activities on cetaceans. The evidence that whales are changing their distribution in Hawaii indicates that they are not habituating to disturbance associated with the increasing levels of vessel traffic. Because of the low population level of North Pacific humpback whales, the potential adverse effects of vessel traffic on the population and the apparent displacement of cow/calf pairs from nearshore habitat, NMFS has concluded that the appropriate management action is to require more restrictive approach limits in areas where cow/calf pairs are known to occur. Therefore, NMFS has added to the proposed rule the cow/calf areas that were originally designated in the NOI. The approach limit in these areas will be 1,000 feet for aircraft and 300 yards for vessels. Although the environmental community supported this change in comments on the proposed rule, the whale watching community and other users did not have an opportunity to comment on the designation of cow/calf areas. Therefore, NMFS is publishing this as an interim rule to give those groups, as well as other interested parties, an opportunity to comment.

Response to Comments on the Proposed Rule

Twenty-one organizations and individuals provided written comments on the proposed rule. Seven provided testimony at a public hearing held on December 15, 1986, in Lahaina, Maui, Hawaii. Of the twenty-eight comments and testimonies received, seven favored the proposed regulations as written. Ten commenters said that the proposed regulations required clarification on the issue of approach versus proximity to whales. Four commenters felt the proposed regulations were unnecessary. Seven stated that more rigorous conservation measures were required. The specific written and oral comments requiring a response are summarized below.

Comment: Seven commenters said that the proposed regulations required clarification on the issue of unintended approaches, i.e., whales approaching vessels closer than the prescribed limits.

Response: NMFS recognizes a difference between approach and proximity to humpback whales, and that whales may approach vessels. The proposed regulation clearly states that approach (moving toward) within the prescribed limits is prohibited. A vessel would not ordinarily violate the proposed regulation by inadvertently being inside the prescribed limits. NMFS Enforcement agents and NOAA General Counsel will assess both the actions of vessels and whales to determine if intentional approaches have occurred. If a motorized vessel is approached by whales while inside the prescribed limits, NMFS recommends that the vessel operator shift into neutral (and avoid revving the engine) until the whales are observed outside the prescribed limit. An operator of a sailing vessel who finds the vessel within the prescribed limits of a humpback whale should take immediate steps to place the vessel outside the prescribed limits.

Comment: Several commenters expressed concern that the failure of recent studies to identify distinct and persistent calving and breeding areas may reflect changes in the distribution of whales brought about by vessel disturbance. Thus, NMFS' failure to include designated calving and breeding areas was perceived as inadequate protection of important habitat.

Response: NMFS has reviewed available information and agrees that protection of known or previously identified resting areas for cows with calves may be warranted. Therefore, NMFS has included in the interim rule cow/calf areas in which greater restrictions apply. Since designation of these areas was not discussed in the proposed rule (51 FR 42271), NMFS is allowing a 60-day comment period to provide the public with an opportunity to express its views.

Comment: One commenter stated that the number of harassment complaints has decreased in recent years despite an increase in registered vessels, and, therefore, the current NOI was adequate.

Response: The effectiveness of the NOI was not judged by the number of complaints received but by its apparent utility in protecting whales. Available information indicates that there have been some changes in the distribution of whales in Hawaii and that disturbance from vessel traffic may be a cause. NMFS believes that the information on changing distribution of whales indicates that the NOI has not been effective in protecting whales from increasing levels of disturbance.

Comment: One commenter questioned the different approach limits in Hawaii and New England, pointing out that NMFS' New England whale watching guidelines recommend a 100 foot approach limit.

Response: The Northwest Atlantic stock of humpback whales, part of which is subject to whale watching in New England during the summer feeding season, is estimated to be at or above its initial (pre-exploitation) population size, and available information indicates that humpback whales off Cape Cod have acclimated to the presence of vessels (Watkins 1986). The North Pacific stock of humpback whales, in contrast, is thought to be at just 8 to 10 percent of its initial size, and available information suggests they are being displaced from nearshore waters in Hawaii (Glockner-Ferrari and Ferrari 1985 and 1987, Forestell 1985). NMFS believes these more restrictive measures are justified in Hawaiian waters under the authority of the ESA.

Comment: One commenter recommended implementing restrictions similar or identical to those in effect for Glacier Bay, Alaska (a National Park Service National Monument). A permit system for all vessels was suggested, along with adoption of a 400 yard approach limit in recognized calving and breeding areas, and the prohibition of cruise ships transiting "* * * through major whale waters and nearshore off Lahaina".

Response: NMFS believes providing a buffer around the whales is a more workable solution than attempting to restrict the number of vessels statewide. The National Park Service requires a ¼ nautical mile separation from humpback whales in Glacier Bay. The available information shows that humpback whales respond to vessels at one to several kilometers. There is little information on behavioral changes at distances between 0 and 1 kilometer. NMFS believes that adding the force of regulations to the existing guidelines will provide adequate protection to humpback whales in Hawaiian waters. NMFS will continue to monitor the situation in Hawaii to determine if additional protective measures are necessary.

Currently NMFS does not perceive cruise ships to be a problem. Cruise ships transiting Hawaiian waters spend the majority of their time in waters deeper than 100 fathoms where encounters with whales are unlikely.

Comment: Several commenters questioned the ability of NMFS to "* * * monitor the effects of all activities occurring in close proximity to whales to determine if additional measures are necessary * * *."

Response: NMFS agrees that a comprehensive humpback whale management effort is needed. We are developing a recovery plan for humpback whales which will include programs to monitor the status of the population and identify management needs.

Comment: One commenter criticized NMFS for short-sightedness in stressing enforcement activities over public education and research.

Response: NMFS has conducted a public education program in Hawaii since 1979. The research information on changing distribution of whales indicates that the public education program has not been effective. NMFS will maintain its public education program and expects the regulations to supplement the education program. Coordination of permitted research activities by the Western Pacific Program Office will allow NMFS access to the most recent information collected in each whale season.

Comment: Two commenters noted the apparent disparity in findings by whale researchers in New England, Alaska, Hawaii, and Mexico.

Response: NMFS acknowledges the different conclusions of researchers. Information from the New England area suggests that some species of whales may be becoming accustomed to vessel traffic. Researchers in Mexico found that gray whales abandoned a major calving lagoon in response to increased commercial shipping and dredging activities, and returned when the activities ceased. In Southeast Alaska and Hawaii, researchers found significant short term behavioral changes in relation to vessel activity. This ambiguity in the data indicates that a conservative approach should be taken in Hawaii.

Comment: One commenter stated that there is little hard scientific evidence to indicate that users of Hawaiian waters are having a negative impact on the reproductive fitness of North Pacific humpback whales.

Response: NMFS acknowledges that long term studies in this area are needed. However, the absence of definitive long term research results does not preclude the adoption of protective measures. The ESA requires NMFS to use the best available information in managing protected species. In this case, the information reviewed by the NMFS indicates that whales are being displaced from a portion of their habitat. Although no information on reproductive fitness is available, habitat loss usually results in reduced fitness. Therefore, NMFS believes there is sufficient information available to support this action.

Comment: One commenter stated that the proposed regulations appear to "* * * target the whale watching industry as the culprits and primary reason for the creation of said regulations".

Response: NMFS discussed the benefits derived from whale watching in the preamble to the proposed rule and stated its intent to provide an opportunity for that industry to continue. NMFS also stated that the vast majority of vessel traffic in Hawaii is not engaged in commercial whale watching. The regulation will apply equally to all water users.

Comment: One commenter suggested that Federal activities, including military activity which may adversely affect humpback whales, be prohibited by regulation.

Response: NMFS routinely consults with Federal agencies in its Endangered Species Act section 7 consultation process to ensure that federally funded or permitted activities are not likely to jeopardize the continued existence of humpback whales.

Comment: The U.S. Navy stated that Naval ships on maneuvers may violate the proposed regulations unintentionally, and suggested prohibiting only "intentional" approaches within 100 yards.

Response: NMFS will consult with the Navy, as appropriate, to ensure that activities are not likely to jeopardize the continued existence of humpback whales. The proposed regulation recognizes that vessel traffic may have adverse effects on whales. Naval vessels will be subject to the regulation just as all other vessels will be. NMFS enforcement agents and NOAA attorneys will assess both the actions of vessels and whales in determining if violations have occurred and whether prosecution is warranted under the circumstances.

Comment: One commenter recommended prohibiting jet ski and parasail activity in areas where cow/calf pairs have been commonly observed.

Response: Jet skis, parasails, and all other types of water craft are bound by the regulation. NMFS is not aware of any studies that indicate parasail or jet ski activities result in greater adverse reaction by whales than other vessel traffic. It is possible that constant noise associated with high speed traffic could present an effective acoustic and visual barrier. NMFS believes that constant, high-speed surface activity is a potential problem, and will continue to work with state agencies and private operators to address this issue.

Comment: Two commenters questioned the effectiveness of the 1,000 foot approach limit for aircraft in preventing harassment of whales, and suggested that greater limits be established.

Response: Most aerial surveys of cetaceans are conducted between 500 and 1,000 feet. In most instances, passes at 1,000 feet do not result in noticeable behavior changes. Although continual hovering by a large, or unusually noisy helicopter at an altitude over 1,000 feet may result in an obvious behavior change in a whale, such an action is covered by section D(a)(4) of the interim regulation which prohibits the disruption of normal behavior.

Comment: One commenter stated that the proposed regulation reduces the horizontal distance limit for aircraft to 100 yards.

Response: The proposed regulation clearly states that it would be prohibited "* * * to operate any aircraft within 1,000 feet of any humpback whale". This, in effect, creates a 1,000 foot aerial dome over a whale.

References

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Geist, V. 1971. A behavioural approach to the management of wild ungulates. In E. Duffey and A.S. Watt (eds.), the Scientific Management of Animal and Plant Communities for Conservation. Blackwells Scientific Publ., Oxford. pp. 413–424.

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Herman, L.M., P.H. Forestell, and R.C. Antinoja. 1980. The 1976/1977 migration of humpback whales into Hawaiian waters: composite description. Marine Mammal Commission Report No. MMC–77–19.

Jones, M.L. and S.L. Swartz. 1984. Demography and phenology of gray whales and evaluation of whale watching activities in Laguna San Ignacio, Baja, California Sur Mexico. In M.L. Jones, S.L. Swartz and S. Leatherwood (eds.) The Gray Whale (*Escherichtius robustus*). Academic Press. Orlando, Florida.

Wallach, J.P. and Boever, W.J. 1983. Diseases of exotic animals. W.B. Saunders Co., Philadelphia.

Watkins, W.A. 1986. Whale reactions to human activities in Cape Cod waters. Marine Mammal Science 3:351–262.

Classification: Applicability of Other Laws, Regulations and Requirements

NMFS has prepared an environmental assessment in which it determined that approval and implementation of the proposed rule would not significantly affect the quality of the human environment, and that the preparation of an environmental impact statement would not be required by section 102(2) of the National Environmental Policy Act or its implementing regulations.

The NOAA Administrator determined that this rule is not a "major rule" under Executive Order 12291 and that the proposed action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprise to compete in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this action will not have a significant impact on a substantial number of small entities, and there will not be a difference in degree of impact due to varying sizes of business affected.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 222

Endangered and threatened wildlife, Administrative practice and procedure, Exports: Fish, Imports: Marine mammals.

Dated: November 17, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, Title 50, Chapter II, Part 222 of the Code of Federal Regulations is amended as set forth below.

PART 222—[AMENDED]

1. The authority citation for Part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

2. Subpart D—*Incidental Capture of Endangered Sea Turtles,* consisting of § 222.41, is redesignated as Subpart E.

3. A new Subpart D consisting of § 222.31 is added, to read as follows:

Subpart D—Special Prohibitions

Sec.

222.31 Approaching humpback whales in Hawaii.

Subpart D—Special Prohibitions

§ 222.31 Approaching humpback whales in Hawaii.

(a) *General:* Except as provided in §§ 222.23 through 222.28 (Scientific permits) and paragraph (b) of this section it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Operate any aircraft within 1,000 feet of any humpback whale; or

(2) Approach by any means, within 100 yards of any humpback whale; or

(3) Cause a vessel or other object to approach within 100 yards of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation or evasive swimming patterns; interruptions of breeding, nursing, or resting activities; attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movements; or the abandonment of a previously frequented area.

(b) *Cow/calf waters.* Except as provided in §§ 222.23 through 222.28 (Scientific permits), it is unlawful for any person subject to the jurisdiction of the United States to commit, to solicit another to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, while in waters designated as cow/calf waters, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Approach by any means within 300 yards of any humpback whale; or

(2) Cause a vessel or other object to approach within 300 yards of a humpback whale; or

(3) Operate any aircraft within 1,000 feet of any humpback whale.

(c) The following areas are designated as cow/calf waters:

(1) Adjoining the island of Lanai—all waters within two miles of the mean high-water line along the north and east between lines extending perpendicular from the coast from Kaena Point to Kamaiki Point;

(2) Adjoining the island of Maui—all waters inshore of a straight line drawn between Hekili Point and Puu Olai.

[FR Doc. 87–26809 Filed 11–20–87; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 225
Monday, November 23, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

Limes and Avocados Grown in Florida; Proposed Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require Florida lime and avocado handlers to report to the Florida Lime and Avocado Administrative Committees the daily packout of selected sizes of containers sold and delivered in the State of Florida. The information collected will provide these committees with data on the quantities of Florida limes and avocados sold and delivered in Florida. The committees need this information to determine if it is economically beneficial to promote limes and avocados in Florida. The committees work with the Department in administering the marketing agreement and order programs.

DATE: Comments must be received by December 23, 1987.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida, and Marketing Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. This order is effective under the Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective until OMB approval is obtained.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes subject to regulation under the Florida lime marketing order, and approximately 263 lime producers in Florida. There are approximately 34 handlers of Florida avocados subject to regulation under the Florida avocado marketing order, and approximately 300 avocado producers in Florida. The majority of these handlers and producers may be classified as small entities.

The proposed reporting requirements were unanimously recommended by the Florida Lime and Avocado Administrative Committees. Such requirements are designed to provide the committees with information necessary to determine the quantity of Florida limes and avocados sold and delivered in Florida. An analysis of such data would be used by the committees to help them decide whether advertising and promotion programs for limes and/or avocados would be cost effective.

The proposed reporting requirements would require all lime and avocado handlers to report their daily packout of limes and avocados, by container type, sold and delivered in Florida. The committees need such information to make a decision on whether or not to implement intrastate promotion and advertising program for Florida limes and/or avocados. The committees believe that such programs may have the potential to generate new markets for limes and avocados, but they need to know the quantities of these fruits currently sold and delivered in Florida to decide whether the benefits of such programs would outweigh the costs. They also could use the information to help them maximize the benefits derived from any funds spent on any such promotion and advertising programs.

The actual cost to handlers for complying with this proposed change is expected to be minimal. Lime handlers already are required to report similar information on lime shipments. Hence, this additional requirement that they report intrastate shipments is expected to have little effect on their reporting burden or cost. Likewise, avocado handlers' costs are expected to be affected minimally because most of them already keep information on intrastate avocado shipments for use in making marketing decisions. Conversely, additional sales resulting from advertising and promotion programs would have the potential of generating increased returns for lime and avocado growers and handlers. On the basis of the foregoing, the impact of these proposed changes on growers and handlers would be expected to be beneficial.

The proposed reporting requirements are authorized under § 911.60 of Marketing Order 911, and § 915.60 of Marketing Order 915.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Parts 911 and 915

Marketing Agreements and Orders, Limes (Florida) and Avocados (Florida).

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 911 and 915 be amended as follows:

1. The authority citation for both 7 CFR Parts 911 and 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.111 (52 FR 24134, June 29, 1987) is amended by designating the existing undesignated paragraph as paragraph (a), and adding a new paragraph (b) to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.111 Pack-out reports.

* * * * *

(b) Each handler shall, at the end of each day's operation, report to the committee the number of containers of limes sold and delivered in the State of Florida in the following containers: (1) ⅕ Bushel, (2) ⅝ Bushel, and (3) ⅘ Bushel.

3. Section 915.150 is amended by adding a new paragraph (d) to read as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.150 Reports.

* * * * *

(d) Each handler shall, at the end of each day's operation, report to the committee the number of containers of avocados sold and delivered in the State of Florida in the following containers: (1) ¼ Bushel, (2) ½ Bushel, and (3) ⅘ Bushel.

Dated: November 16, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-26908 Filed 11-20-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Withdrawal of Proposed Customs Regulations Amendments Relating to International Aircraft Reporting Requirements at Douglas, AZ

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to amend the Customs Regulations relating to the requirements concerning the arrival and reporting to Customs of civil aircraft at Douglas, Arizona.

Within the Douglas, Arizona, area there are two airports: Bisbee-Douglas International, which has been designated as an "international airport", and Douglas Municipal, a "landing rights" airport. Bisbee-Douglas International has also been designated by Customs as one of the airports at which private aircraft arriving from areas south of the United States must land for Customs processing.

It had been proposed to remove "international airport" status from Bisbee-Douglas International and transfer it to Douglas Municipal. Factors contributing to the proposal included minimal usage of Bisbee-Douglas and various enforcement considerations.

However, after analysis of the comments received in response to the proposal and further review of the matter, it has been determined that the facilities at Douglas Municipal are inadequate to meet the demands of "international airport" status. Therefore, the proposal is being withdrawn.

DATE: Withdrawal effective November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Passenger Enforcement and Facilitation (202–566–5607).

SUPPLEMENTARY INFORMATION:

Background

Under section 1109(b), Federal Aviation Act of 1958, as amended (49 U.S.C. 1509(b)), the Secretary of the Treasury is authorized to designate places in the United States as ports of entry for civil aircraft arriving from any place outside of the United States, and for merchandise carried on the aircraft. These airports are referred to as "international airports", and the location and name of each are listed in § 6.13, Customs Regulations (19 CFR 6.13). In accordance with § 6.2, Customs Regulations (19 CFR 6.2), the first landing of every civil aircraft arriving in the United States must be at one of these international airports unless the aircraft has been specifically exempted from this requirement or permission to land elsewhere has been granted. Customs officers are assigned to all international airports to accept entries of merchandise, collect duties, and enforce Customs laws and regulations. If a civil aircraft desires to land at a "landing rights airport", which means an airport which has not been designated as an international airport, permission must first be obtained and Customs must assign personnel to that airport for that aircraft.

Within the Douglas, Arizona, area there are two airports: Bisbee-Douglas International Airport, which has been designated as an "international airport", and Douglas Municipal Airport, a landing rights airport.

A document was published in the **Federal Register** on August 26, 1986 (51 FR 30375), proposing to remove "international airport" status from Bisbee-Douglas International and transfer it to Douglas Municipal. Factors contributing to the proposal included minimal usage of Bisbee-Douglas and various enforcement considerations.

Discussion of Comments

Public comment received in response to the proposal was about evenly split. However, Customs now believes, as was pointed out by many of the commenters opposed to the change, that the facilities at Douglas Municipal are inadequate to meet the demands of "international airport" status. Also, economic and safety reasons were raised for not making the change. After consideration of the comments received and further review of the matter, it has been determined not to proceed with the proposal.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Dated: November 13, 1987.

William von Raab,

Commissioner of Customs,

[FR Doc. 87-26929 Filed 11-20-87; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 647; Re: Notice No. 644]

Stags Leap District Viticultural Area; Public Hearing

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Amended notice of a public hearing on a proposed rule; extension of written comment period.

SUMMARY: In Notice No. 644 (52 FR 36431), published in the **Federal Register** on September 29, 1987, ATF announced the time and place of a public hearing to be held concerning the establishment of a viticultural area in Napa County, California, to be known as "Stags Leap District." In consideration of a request by the Stags Leap District Appellation Committee for additional time to adequately respond to the questions raised in Notice No. 644, ATF is extending the written comment period.

DATES: Written comments must be received on or before January 15, 1988.

ADDRESS: Written comments are to submitted to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, Attn: Notice No. 647.

FOR FURTHER INFORMATION CONTACT: Jim Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1987, ATF published a notice (Notice No. 644, 52 FR 36431) announcing the time and place of a public hearing to be held by the Bureau concerning the establishment of a viticultural area in Napa County, California, to be known as "Stags Leap District." The hearing was scheduled to be held on December 1 and 2, 1987, at 9:30 a.m. at the Veterans Home of California, Yountville, California. An evening session would also be held, if necessary, at 7:00 p.m.

Persons desiring to make oral comments at the hearing were requested to submit a letter, notifying ATF of their intent to comment, on or before November 6, 1987. Written comments were to be submitted to ATF on or before December 15, 1987.

Subsequent to publication of the notice, the Bureau received a letter, on behalf of the petitioners (Stags Leap District Appellation Committee), requesting a three month postponement of the hearing in order to provide them with additional time to adequately respond to the questions raised in the notice. Since arrangements have already been made in preparation of a hearing on December 1 and 2, including reservations (and deposit made) for the rental hall, arrangements for a stenographer, etc., the Bureau is unable to postpone the hearing.

However, in order to provide the petitioners, and others concerned, some additional time, ATF is extending the written comment period from December 14, 1987 to January 15, 1988.

Persons desiring to make oral comments at the hearing should still submit their letter to ATF on or before November 6, 1987, notifying the Bureau of their intent to comment.

Drafting Information

The author of this document is James Ficaretta, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, and Wine.

Authority

This notice is issued under the authority of 27 U.S.C. 205.

Approved: November 13, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87–26939 Filed 11–20–87; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 905

Surface Coal Mining and Reclamation Operations Under a Federal Program for California, Extension of Public Comment Period and Rescheduling of Public Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of extension of comment period and rescheduling of public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior is extending the comment period and rescheduling the public hearing on a proposed rule to establish a Federal program to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of California. This action will afford additional time for public comment.

DATES: *Written comments:* The comment period is extended until 5:00 p.m. local time January 21, 1988.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Sacramento, California on January 14, 1988, at 9:30 a.m. local time.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico, or mail to the Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Albuquerque, New Mexico 87102.

Public hearing: Conference Room, Federal Building, 300 Cottage Way, Sacramento, California 95825.

Requests for public hearings: Submit request orally or in writing to a person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Robert Hagen, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Albuquerque, New Mexico 87102; Telephone (505) 766–1486 or Patrick W. Boyd, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–1864.

SUPPLEMENTARY INFORMATION: On October 22, 1987, OSMRE published in the **Federal Register** a proposed rule that would establish a Federal program to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of California (52 FR 39594). The proposal stated that comments would be accepted until 4:00 p.m. local time on December 31, 1987, and that OSMRE, upon request, would hold a public hearing on the proposed rule in Sacramento, California on December 24, 1987. OSMRE wishes to avoid placing a burden on interested members of the public due to the coincidence of the close of the comment period and the public hearing date with the holiday season. Therefore, the comment period has been extended to January 21, 1988, and the public hearing will be held, if requested, on January 14, 1988.

Date: November 17, 1987.

Carson W. Culp,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–26903 Filed 11–20–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 183

[CGD 87–009]

Boating Safety; Electrical System Standard

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard proposes to amend its regulations on electrical systems for new recreational boats by incorporating Underwriters Laboratories (UL) Standard 1426—Cables for Boats—in lieu of a general reference to independent testing laboratories that is no longer considered useful, and by deleting UL Standard 83—Thermoplastic-Insulated Wires and Cables. The intended effect of the proposed amendments is to add the UL listed boat cable standard which is now widely used for marine cable installed in recreational boats.

DATE: Comments must be received on or before February 22, 1988.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 87-009), U.S. Coast Guard, Washington, DC 20593-0001. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs, Boating Safety Division, (202) 267-0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to submit written views, data or arguments. Comments should include the name and address of the person making them and identify this notice [CGD 87-009]. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting these proposed amendments are Mr. Alston Colihan, Project Manager and Christena Green, Project Attorney.

Discussion of the Proposed Amendment

The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The Council recommended the addition of Underwriters Laboratories, Inc. (UL) Standard 1426—Boat Cable to the list of acceptable wire types in the Coast Guard Electrical System Standard in Subpart I of Part 183 and the deletion of wire types referred to in paragraphs 183.435(a) (4) and (5) of Subpart I of Part 183. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593-0001.

Products meeting marine standards published by Underwriters Laboratories, Inc., are widely used in the manufacture of recreational boats. When the Coast Guard promulgated the Electrical System Standard in Subpart I of Part 183, the only UL standard applicable to marine cables was UL Standard 83—"Thermoplastic-Insulated Wires and Cables." This standard covered many different types of thermoplastic-insulated wires and cables, including marine type cables. Paragraph 183.435(a)(5) allowed manufacturers to use a conductor "which meets the mechanical water absorption and flame retardant standards of UL Standard 83."

A UL subcommittee was in the process of developing UL Standard 1426—"Cables for Boats," which was not adopted as a final UL standard until December 1, 1986. To allow the future use of UL Standard 1426 when it was adopted as a final UL Standard, § 183.435(a)(4) in Subpart I of Part 183 was drafted to allow manufacturers to use a conductor "listed for marine use by an independent testing laboratory which provides listing, labeling and follow-up service." This is a general reference to Underwriters Laboratories, Inc., listed boat cable and will not be needed if UL Standard 1426 is added to § 183.435(a).

Under this proposal, UL Standard 1426, written specifically for wiring used in the marine environment, would replace the existing references in § 183.435(a) (4) and (5).

Regulatory Evaluation

The proposed regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The proposal to change the incorporation by reference in the Electrical Standard to add UL Standard 1426 and delete UL Standard 83 would not result in any increased costs per boat. There is no specific boat cable complying only with the UL 83 specifications set out in § 183.435(a)(5), and in practice, the industry is already using cable meeting UL 1426 or one of the other standards published in this subsection.

Since the impact of this proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects for 33 CFR Part 183

Marine safety, Incorporation by reference.

In consideration of the foregoing, the Coast Guard proposes to amend Part 183 of Title 33, Code of Federal Regulations to read as follows:

PART 183—[AMENDED]

1. The authority citation for Part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. Section 183.5 is amended by revising the Underwriters Laboratories, Inc., portion of materials incorporated by references in paragraph (b) to read as follows:

§ 183.5 Incorporation by reference.

(b) * * *

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062

UL 1114, Standard for Marine Use: Flexible Fuel Line Hose—1979

UL 1128, Marine Blowers—1977

UL 1426, Cables For Boats—1986

3. The authority citation for Subpart I is removed.

4. Section 183.435 is amended by removing paragraph (a)(5) and by revising paragraph (a)(4) to read as follows:

§ 183.435 Conductors in circuits of 50 volts or more.

(a) * * *

(4) A conductor that meets UL Standard 1426.

* * * * *

W.P. Hewel,

Captain, U.S. Coast Guard Acting Chief, Office of Boating, Public, and Consumer Affairs.

Dated: November 18, 1987.

[FR Doc. 87-26940 Filed 11-20-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[FRL-3293-6]

Approval and Promulgation of Implementation Plans; State of Missouri; Stack Heights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking (PRM).

SUMMARY: In this document, EPA proposes to approve a revision to the Missouri state air pollution control regulations as part of the Missouri State Implementation Plan (SIP). The purpose of this revision is to limit the use of dispersion techniques rather than emission reductions to meet ambient air quality standards in the vicinity of major sources of air pollution. The use of certain dispersion techniques is prohibited by section 123 of the Clean Air Act. The purpose of this document is to advise the public of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received by December 23, 1987.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submission is available at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: On July 8, 1985 (50 FR 27892), EPA published final rules regulating the manner in which techniques for dispersion of air pollutants from smokestacks may be considered in setting limits on the emissions of pollutants into the air. These rules are required by section 123 of the Clean Air Act and are codified in 40 CFR Part 51. All states are required to adopt consistent requirements for regulating sources of air pollution within their borders.

The purpose of section 123 is to prevent sources of air pollution from using tall smokestacks or other dispersion techniques to meet air quality standards. Air quality standards are to be met in the vicinity of sources of air pollution by using continuous emission reduction techniques which actually reduce the amount of pollution emitted into the air. Dispersing pollutants high into the air simply moves the pollution without controlling it. Pollutants being dispersed from tall stacks are suspected of contributing to the acid rain phenomenon. The rules are required to limit the amount of stack height that can be credited in evaluating permit applications and setting emission limits but no attempt is made to limit physical stack height.

The state of Missouri has submitted regulations which EPA believes satisfy the requirements of 40 CFR Part 51 regarding the use of dispersion techniques. The submission consists of three regulatory changes. One is a new rule, 10 CSR 10-6.140, Restriction of Emissions Credit for Reduced Pollutant Concentrations for the Use of Dispersion Techniques, which limits the credit that can be allowed for the use of tall stacks by existing sources to what is known as good engineering practice. A change to the permit rule, 10 CSR 10.060, Permits Required, limits the allowable stack height credit for new sources and for major modifications of existing sources. A series of supporting definitions have been adopted or revised in 10 CSR 10-6.020, Definitions.

These regulations were adopted by the Missouri Air Conservation Commission on March 20, 1986, following reasonable notice and public hearing. They were submitted as a revision to the Missouri SIP by the Governor's designated representative on August 18, 1986. The state submittal also included source-specific stack height analyses. EPA is not proposing any action on these analyses today as there will be addressed in a future **Federal Register** action.

In order to be approvable, state regulations must adhere closely to their Federal counterparts. This is to ensure that sources in all parts of the country are treated consistently. In adopting its stack height requirements, Missouri has closely followed the language of the applicable EPA regulations.

The state has adopted definitions of the terms "dispersion techniques", "emission limitation", "excessive concentration", "good engineering practice stack height", and "nearby" that are identical, or substantially similar to the corresponding Federal definitions.

The state has adopted permit provisions meeting the requirements of 40 CFR 51.160 and 40 CFR 51.166, limiting the allowable credit for tall stacks for new or modified sources. These Federal regulations limit stack height credit for sources subject to general new source review permit procedures and for sources subject to evaluation against Prevention of Significant Deterioration requirements. The new state revisions implement these Federal requirements at the state level.

The regulations adopted by the state of Missouri do not include EPA's definitions of "stack" and "stack in existence" found at 40 CFR 51.100(ff) and 51.100(gg), respectively. On October 8, 1987, the state provided EPA with a letter committing to adopt definitions of these terms consistent with EPA's requirements and to apply EPA's definitions of these terms until the adoption action is complete. EPA proposes to incorporate the state's committal letter as part of the SIP in the final rulemaking, unless the aforementioned definitions are adopted and submitted prior to final rulemaking.

The state has also adopted a general regulation limiting the credit that can be allowed for stack heights at existing facilities. As with the other provisions, this rule follows the applicable requirements, in this case those of 40 CFR 51.118(a) and (b).

For further information on the specific requirements of the Federal stack height requirements, the reader is referred to the July 8, 1985, rulemaking. Additional information on the Missouri rules can be obtained at the addresses given above.

This state submission constitutes a proposed revision to the Missouri SIP. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of sections 110 and 123 of the Clean Air Act and of 40 CFR Part 41, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: March 9, 1987.

Morris Kay,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register November 18, 1987.

[FR Doc. 87-26913 Filed 11-20-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 355

[FRL-3293-7]

Extremely Hazardous Substances List

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of availability; Bacitracin.

SUMMARY: On November 17, 1986 EPA proposed the deletion of 40 substances from the list of "extremely hazardous substances" promulgated by the Agency under Section 302 of the Emergency Planning and Community Right to Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act of 1986. EPA has undertaken further study of these substances, and has completed review of the toxic effects induced after short-term exposure of one of these substances, bacitracin. Today, EPA is providing notice of the availability of this study of bacitracin, including the approach used to determine if it should be considered "extremely hazardous", for public review and comment.

DATES: Comments on the bacitracin study will be accepted on or before January 7, 1988.

ADDRESSES: Copies of the bacitracin study and other materials relevant to the November 17, 1986 proposal are available for public review in the Superfund Docket located in Room Lower Garage at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection, by appointment only, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

Written comments should be submitted to Preparedness Staff, Superfund Docket Clerk, Attention: Docket Number 300PQ, Superfund Docket Room Lower Garage, U.S. Environmental Protection Agency, Mail Stop WH-548D, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Beal, Health and Environmental Review Division, Office of Toxic Substances, or Carrie Wehling, Office of General Counsel, U.S. Environmental Protection Agency, or the Chemical Emergency Preparedness Hotline at 1-800-535-0202, in Washington, DC at 1-202-479-2449.

SUPPLEMENTARY INFORMATION: On October 17, 1986, President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499 (1986). Title III of SARA established a program designed to encourage state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. The program is codified as the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050.

Title III is organized into three subtitles. Subtitle A, sections 301-305, establishes the framework for local emergency planning. Under section 302, a facility which has present an "extremely hazardous substance" in excess of its "threshold planning quantity" must notify its State emergency planning commission and participate, as necessary, in local emergency planning activities.

Section 302 directed EPA to publish the list of extremely hazardous substances within 30 days of the enactment of SARA. Section 302(a)(2) required that this list be identical to the list compiled by EPA in 1985 as part of the Agency's Chemical Emergency Preparedness Program. Under section 302(a)(4), EPA is authorized to revise the list but any such revisions must take into account the toxicity of the substance. The term "toxicity" is defined to include "any short- or long-term health effect which may result from a short-term exposure to the substance."

EPA published the list of 402 extremely hazardous substances and threshold planning quantities in an interim final rule on November 17, 1986. 51 FR 41,570. This list was identical to the November, 1985 list compiled by EPA, which had been originally established by the Agency to help communities identify chemical substances present in the community that could cause acute health effects when released. Because EPA was aware that, based on information received since 1985, several substances did not meet the acute toxicity criteria, on November 17, 1986, the Agency also proposed to delete 40 substances from the list. Because the statute required EPA to also consider the long-term, as well as acute, effects from short-term exposure in revising the list, EPA requested data on such long-term effects and solicited comment on how such effects should be incorporated into criteria for revising the list.

Based on public comment on this proposal, EPA announced on April 22, 1987 that it had deferred the proposed delisting of these substances, pending an evaluation of the long-term effects from short-term exposure to each of the substances proposed for delisting. 52 FR 13,388.

On June 5, 1987, EPA received a petition from A.L. Laboratories, Inc., requesting a delisting of bacitracin, a substance it manufactures. In response to that petition, EPA has developed an approach to assess the toxicity of bacitracin and to determine whether it should be considered an "extremely hazardous substance" under section 302 of Title III. Under this approach, EPA used a weight-of-evidence evaluation to identify any life-threatening or irreversible effects that bacitracin may induce in humans exposed for a short time. The approach also defines the concentration or dose of bacitracin at or below which any severe adverse effect identified needed to occur for bacitracin to be considered "extremely hazardous".

Evaluation of readily available literature indicates that, although bacitracin may induce two types of adverse health effects, the likelihood of any such effects resulting from an exposure to a release of bacitracin into the environment is extremely remote. This information thus supports EPA's proposal to delist bacitracin from the list of extremely hazardous substances. EPA has no information which would indicate that bacitracin should remain on the list of extremely hazardous substances on the basis of its toxicity or other characteristics.

EPA will make a final determination on whether to revise the list of extremely hazardous substances under section 302 of Title III to remove bacitracin, as proposed on November 17, 1986, after consideration of any public comment received on this study. Review of the other 39 substances is also underway.

Dated: October 17, 1987.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-26914 Filed 11-20-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Six Month Extension and Reopening of Comment Period on Proposed Endangered Status for Lomatium Bradshawii (Bradshaw's lomatium)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of six month extension and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that it is extending, by six months, the period of consideration and is reopening the comment period and public hearing request period on the proposal to add *Lomatium bradshawii* (Bradshaw's lomatium) to the list of endangered plants. The species is found only in the Willamette Valley of Oregon. To ensure the accuracy of any final decision concerning the appropriateness of listing, public notices must be published in area newspapers and letters soliciting public comment need to be sent. In order to do this, the Service extends the period of consideration by six months and reopens the comment period and the public hearing request period on this proposed rule. The Service's goal is to base its final decision on the most sufficient and accurate scientific information available.

DATES: The comment period on the proposal is reopened until January 22, 1988. Requests for a public hearing must be received by January 7, 1988.

ADDRESSES: Written comments and materials and any request for a public hearing should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, Fish and Wildlife Enhancement, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232 (503–231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION: .

Background

A proposed rule to list *Lomatium bradshawii* (Bradshaw's lomatium) as an endangered species was published in the **Federal Register** November 21, 1986 (51 FR 42116). The notice solicited public comment and provided a deadline for comments and public hearing requests. A number of comments were submitted. The Service did not publish a notice of the proposed rule in local newspapers or solicit comments by mailing to interested parties a copy of the **Federal Register,** notice. Both of these steps are necessary to ensure complete public notice and comments and the sufficiency of data being reviewed. There is, therefore, concern regarding the sufficiency of the available data gathered by the Service relevant to determining whether the species should be lised as Endangered. In order to solicit additional data, the Service extends by six months the period of consideration, pursuant to the Endangered Species Act of 1973, sections 4(b)(6)(A)(i)(III) and (B)(i), 16 U.S.C. 1533(b)(6)(A)(i)(III) and (B)(i), and reopens the comment period and public hearing request period. Written comments may now be submitted for this proposal until January 22, 1988, and requests for a public hearing may be submitted until January 7, 1988, to the Service office in the Addresses section.

Author

The primary author of this notice is Ms. Robyn Thorson, U.S. Fish and Wildlife Service, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232 (503–231–6131 or FTS 429–6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 930205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 960159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: November 17, 1987.

Rolf L. Wallenstrom,

Regional Director.

[FR Doc. 87–26902 Filed 11–20–87; 8:45 am]

BILLING CODE 4310–53–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 70905–7205]

Interjurisdictional Fisheries

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues this proposed rule to implement the Interjurisdictional Fisheries Act of 1966 (Act). The Act establishes a formula-based grant program, the purposes of which are (1) to promote and encourage state activities in support of the management of interjurisdictional fishery resources; and (2) to promote the management of interjurisdictional fishery resources throughout their range. This proposed rule provides guidelines to states in applying for matching grants to conduct research and management activities on interjurisdictional fishery resources.

DATE: Comments will be accepted until December 23, 1987.

ADDRESSES: Send comments to National Marine Fisheries Service, Washington, DC 20235. Copies of the Act and legislative history may be obtained from Austin Magill, Office of Fisheries Conservation and Management, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Austin Magill, 202–673–5272.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would implement Title III of Pub. L. 99–659 (Pub. L.), the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4100 *et seq.*) which was effective October 1, 1987. This Act replaced and repealed Pub. L. 88–309, as amended, known as the Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779 *et seq.*). The Act is a formula matching grant to states to conduct research and other activities on priority interjurisdictional fisheries. The Act allows the Secretary of Commerce to distribute funds to the states to conduct projects on interjurisdictional species, and to enter into agreements with the states for enforcement of Federal and State fishery regulations. The Act also prescribes criteria for judging projects and requires that these projects promote and encourage state activities in support of management of interjurisdictional resources.

While the Act allows for apportionment of funds among all states in fiscal year 1988, the restrictions in fiscal year 1989 and beyond to interjurisdictional species may effectively eliminate many of the inland states from utilizing the funds unless they qualify under an interstate fishery management program or have an enforcement agreement with the Secretary of Commerce or the Interior. The allocation formula becomes even

more focused in fiscal year 1989 and beyond towards the coastal states, due to the fact that fish are normally landed in the coastal states, and the allocation formula is based on commercial landings. A state may be entitled to up to $25,000 or whatever the state's apportionment is less than $25,000 in order to carry out an enforcement agreement. These funds are not required to be matched by the states. The authorization level for state projects is $5 million in fiscal years 1988 and 1989.

Disaster Assistance

The Disaster Assistance language in the Act is nearly identical to Pub. L. 88-309 and retains the provision for 100 percent grants to states for assistance in restoring commercial fisheries affected by resource disasters arising from natural or undetermined causes. The authorization level is $2.5 million in fiscal years 1988 and 1989 for funding disaster assistance projects.

Classification

The Assistant Secretary, NOAA, has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. In addition, the Deputy General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed action will not impose costs on the industry but will provide benefits through improved management, because the Act only prescribes criteria for judging projects, requiring that these projects promote and encourage state activities in support of management of interjurisdictional fisheries resources, and provides for the distribution of funds for projects. There will be no additional reporting requirements imposed upon the state agencies over those required for Pub. L. 88-309. The requirement of Pub. L. 88-309 was approved by OMB Control #0648-0102. The Department has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, therefore, neither an environmental impact statement nor an environmental assessment was prepared.

List of Subjects in 50 CFR Part 253

Fisheries, Financial assistance, Recordkeeping and reporting requirements.

Dated: November 18, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 253 is revised to read as follows:

PART 253—INTERJURISDICTIONAL FISHERIES

Sec.

Authority: 16 U.S.C. 4100 *et seq.*

§ 253.1 Purpose and scope.

(a) The purpose of this part is to implement Title III of Pub. L. 99-659 (16 U.S.C. 4100 *et seq.*) which has two objectives:

(1) To promote and encourage state activities in support of the management of interjurisdictional fishery resources, identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(b) The scope of this part includes guidance on making financial assistance awards to states or Interstate Commissions to undertake projects in support of management of interjurisdictional species, in both exclusive economic zone (EEZ) and state waters, and to encourage states to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

§ 253.2 Definitions.

As used in this part, terms have the meaning ascribed in this section.

Act means the Interjurisdictional Fisheries Act of 1986, Pub. L. 99-659 (Title III).

Commercial fishery failure means a serious disruption of an interjurisdictional fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include the inability to harvest or sell raw fish or manufactured and processed fishery merchandise or compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to an interjurisdictional fishery resource.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Federal fishery management plan means a plan developed and approved by the Secretary under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine animal or plant life including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(a) a fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the EEZ; or

(b) a fishery resource for which there exists an interstate or a Federal fishery management plan; or

(c) a fishery resource which migrates between the waters under the jurisdiction of two or more states bordering on the Great Lakes.

Interstate commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by an interstate commission which contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the states to conserve and manage the fishery resource.

Landed means the first point of offloading fish or fishery products.

Program means a plan to be undertaken with a specific goal to be accomplished and consisting of one or more projects.

Projects means an objective to be undertaken in a program for research in support of the management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his designee.

State means any of the states of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

Value means the monetary worth of the fish used in developing the apportionment formula, and it is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed at the first point of landing.

§ 253.3 Apportionment.

(a) Designation of state agency. The Governor of each state shall notify the Secretary which agency of the state government is authorized under its laws to regulate commercial fisheries and is designated to submit applications and to enter into grant-in-aid awards. An official of such agency shall certify as to the official(s) authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(b) Apportionment formula. The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

Volume of x state/Value of all states = A%

Value of x state/Value of all states = B%

A% + B% / 2 = state percentage used to determine state share of total available funds

(2) Upon apportionment by Congress, the Secretary will take the following actions:

(i) Determine each state's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct Regional Directors to promptly notify states of funds' availability.

(c) Beginning fiscal year 1989, no state, under the apportionment formula in paragraph (b) of this section that has a ratio of one-third of one percent or higher may receive an apportionment for any fiscal year which is less than one percent of the total amount of funds available for that fiscal year.

(d) If a state's ratio under the apportionment formula in paragraph (b) is less than one-third of one percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary or the Secretary of the Interior;

(3) Borders one or more of the Great Lakes; or

(4) Has in effect an interstate fisheries management plan or research program.

(e) Any state that has a ratio of less than one-third of one percent and meets any of the requirements set forth in paragraphs (d) (1), (2), (3) or (4) of this section may receive an apportionment for any fiscal year which is not less than one-half of one percent of the total amount of funds available for apportionment for such fiscal year.

(f) No state may receive an apportionment for any fiscal year under this section which is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(g) Unused apportionments. Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be apportioned to that state and must be added to such funds as are appropriated for the next fiscal year (and will be treated as having been appropriated for such next year) for apportionment under parpagraph (b) of the section. Any notification or return of funds referred to in paragraphs (g) (2) or (3) of this section by a state is irrevocable. States which choose not to participate in any Federal fiscal year must notify the NMFS Regional Director before the end of the third quarter of that year.

(h) Disaster Assistance Funds. The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secertary may distribute these funds after he has made a thorough evaluation of the scientific information submitted, and has determined that there is a commercial fishery failure of an interjurisdictional fishery resource arising from natural or undetermined causes.

§ 253.4 General provisions.

(a) *General.* (1) Any state may, through its state agency or an interstate commission, submit to the Regional Director, NMFS, a proposal for a project which may be multiyear, which includes full scope of work, specifications, and cost estimates for such project. The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the projects.

(2) The Secretary, before approving any proposal for a project, will evaluate the proposal as to:

(i) the soundness of design;

(ii) the possibilities of securing productive results;

(iii) the minimization of duplication with other research projects in support of the management of interjurisdictional fishery resources and carried out under this title or under any other law or regulation;

(iv) the organization and management of the project;

(v) the methods proposed for monitoring and evaluation of the success or failure of the project, and

(vi) the consistency of the project with the purposes specified in § 253.1.

(3) The Secretary shall give priority consideration to those landed commercial resources whose volume and value is used in determining the state's apportionment.

(b) *State matching requirements.* The Federal share of the costs of any project conducted under this title cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) the state has adopted an interstate fishery management plan for the resource to which the project applies; or

(2) the state has adopted fishery regulations which the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies; in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(c) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, which meets the criteria in paragraph (a)(2) of this section, the Secretary will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval, to the state agency submitting the proposal or, if the proposal is submitted through an

interstate commission, such commission and the state.

(d) *Restriction.* The expenditure of funds under this title may be applied only to projects for which a proposal has been approved under § 253.4(a), except that up to $25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an enforcement agreement with the Secretary or the Secretary of the Interior. This enforcement agreement does not require state matching funds.

(e) *Prosecution of work.* All work must be performed in accordance with applicable state laws except when such laws are in conflict with Federal laws or regulations in which case such Federal law or regulations prevail.

§ 253.5 Administrative requirements.

All grants/cooperative agreements made as a result of the Act are subject to Federal policies and guidance on financial assistance contained in Executive Orders, OMB Circulars and regulations; Department of Commerce regulations, and directives; NOAA directives; and terms and conditions of the awards.

[FR Doc. 87-26943 Filed 11-20-87; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 225
Monday, November 23, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Intent To Enter Into Cooperative Agreement With Iowa State University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Iowa State University for Quantitative Analysis of Agricultural Development and Trade.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Iowa State University. The objective of this agreement is to build an analytical base for monitoring the impact of agriculture assistance programs on international agricultural trade in general, and US agricultural exports in particular.

Assistance will be provided only to the University which will utilize funds provided to refine the currently used model to address concerns of direct interest to OICD and AID, as well as draw from the model the important aspects of US and international agricultural trade with developing countries. Based on the above, this is not a formal request for application. An estimated $50,233 will be available in FY1988 as partial support this work. It is anticipated that the agreement will be funded over a budget period of one year.

Information on proposed Agreement #58–319R–8–007 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Dated: October 26, 1987.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 87–26889 Filed 11–20–87; 8:45 am]

BILLING CODE 3410–DP–M

COMMISSION ON CIVIL RIGHTS

Maine Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on December 2, 1987, at the Moot Court Room, the University of Maine School of Law, 246 Deering Avenue, Portland, ME 04102. the purpose of the meeting is to discuss the status of the agency, plan its future activities, and hold a community forum on "Civil Rights Issues in Maine."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Shirley Ezzy (207–622–4882) or John I. Binkley, Director of the Eastern Regional Division at (202) 523–5264, (TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–26921 Filed 11–20–87; 8:45 am]

BILLING CODE 6335–01–M

Missouri Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 5:00 p.m. and recess at 7:00 p.m. on December 8, 1987, and reconvene at 9:00 a.m. and recess at 4:00 p.m. on December 9, 1987, at the Allis Plaza Hotel, 200 West 12th Street, Kansas City, Missouri. The purpose of the meeting is to hold a community forum to hear presentations on the status of civil rights in Missouri. The forum will include representatives of the City of Kansas City, the League of United Latin American Citizens, NAACP–Kansas City, Missouri Branch, Heart of American Indian Center, Mo-Kan National Interreligious Commission on Civil Rights, Whole Person, Inc., Jewish Community Relations Bureau, Kansas City School District, National Organization of Women, Project Equality, Kansas City Consensus and the Legislative Black Caucus.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Joanne M. Collins, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–26922 Filed 11–20–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to requests by the petitioners and the respondents, the

Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer and one exporter of this merchandise to the United States and the period April 1, 1983 through September 12, 1984. The review indicates no dumping margins during the period.

As a result of the review, the Department intends to revoke the finding with respect to televison receiving sets manufactured by Orion Electric Co., Ltd. and exported to the United States by Otake Trading Co., Ltd.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: November 23, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph Downey or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35821) a tentative determination to revoke in part the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). On July 30, 1983, the Department published in the **Federal Register** (50 FR 3067) the final results of its last administrative review of the finding. The petitioner and two respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on July 9, 1986 (51 FR 24883). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

This review covers television receiving sets manufactured by Orion Electric Co., Ltd. and exported to the United States by Otake Trading Co., Ltd. and the period April 1, 1983 through September 12, 1984.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on f.o.b. prices to unrelated purchasers in the United States. We made adjustments for Japanese inland freight, forwarding and handling charges, bank charges, and commissions to unrelated parties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used third-country prices, as defined in section 773 of the Tariff Act, because there were no sales of such or similar merchandise, manufactured by Orion and sold by Otake, in the home market. Third-country prices were based on f.o.b. prices to unrelated purchasers in Canada and the Federal Republic of Germany. We made adjustments for shipping charges, Japanese inland freight, insurance, bank charges, commissions, royalties, and credit costs. We made further adjustments, where applicable, for differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Intent To Revoke in Part

As a result of our review we preliminarily determine that no dumping margins exist for Orion/Otake for the period April 1, 1983 through September 12, 1984.

Therefore, we intend to revoke the antidumping finding with respect to Japanese television receivers manufactured by Orion Electric Co., Ltd. and exported to the United States by Otake Trading Co., Ltd. Both firms made all sales at not less than fair value during the period April 1, 1980 through September 12, 1984, the date of our tentative determination to revoke in part. As provided for in § 353.54(e) of the Commerce Regulations, Orion Electric Co., Ltd. and Otake Trading Co., Ltd. have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written agreement. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured by Orion Electric Co., Ltd. and exported to the U.S. by Otake Trading Co., Ltd. and entered, or withdrawn from warehouse, for consumption on or after September 12, 1984.

Interested parties may submit written comments on these preliminary results and intent to revoke in part within 30 days of the date of publication of this notice, may request an administrative protective order within 5 days of the date of publication, and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter.

The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

This administrative review, intent to revoke in part, and notice are in accordance with section 751(a) (1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)), and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

Date: November 13, 1987.

[FR Doc. 87-26942 Filed 11-20-87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan

November 17, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 17, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer

to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6583. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the 1987 import restraint limits for Categoires 314/32Opt., 337, 342/642, 435, 442, 444 and 611, produced or manufactured in Japan and exported to the United States.

Background

A CITA directive dated April 10, 1987 (52 FR 12229) established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and Japan, and at the request of the Government of Japan, the 1987 import restraint limits for cotton, wool and man-made fiber textile products in Categories 314/320pt., 337, 342/642, 435, 442, 444, and 611 are being increased by application of swing. The limit for Categories 314/320pt. is also being increased for carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 17, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 10, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on November 17, 1987 the directive of April 10, 1987 is further amended to include adjusted limits for the following categories, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987.[1]

Category	Adjusted 12-mo. limit [1]
314/320pt.[2]	24,775,945 square yards.
337	92,846 dozen.
342/642	351,750 dozen.
435	28,164 dozen.
442	20,743 dozen.
444	18,575 dozen.
611	17,312,458 square yards.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] Category 314, and in Category 320pt., poplin and broadcloth in TSUSA items 320.— through 331.—, with statistical suffixes 21, 22, 24, 26, 72, 74 and 76.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-26917 Filed 11-20-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The provisions of the bilateral agreement provide, in part, that: (1) Group limits, sublimits and specific limits may be increased by designated percentages for swing, carryover and carryforward; however, carryover shall not be available in the specific arrangement period in which the limit is established; (2) exports in excess of annual limits shall be charged to the limits for the subsequent year; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 14–15 December 1987.

Time:

0800–1630 hours, 14 December 1987.
0800–1200 hours, 15 December 1987.

Place: S.A.M.E. Building, Alexandria, VA.

Agenda: The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations will meet for the purpose of writing the initial draft of the final report. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-26923 Filed 11-20-87; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 14–15 December 1987.

Time of meetings: 0800–1700 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issue of the study effort. The Subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to

preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–26911 Filed 11–20–87; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Idaho Operations Office Research and Development Announcement; Advanced Heat Pump for Recovery of Volatile Organic Compounds

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Proposal (SCAP) No. DE–SC07–88ID12707 for advance heat pump for recovery of volatile organic compounds.

SUMMARY: The Idaho Operations Office of the U.S. Department of Energy is seeking Cooperative Agreement proposals to design, fabricate, and test advanced heat pumps for recovery of solvents or other volatile organic components (VOCs) from air streams in existing industrial processes. Of interest are air streams containing VOCs that represent a significant energy investment in their manufacture, disposal, or recovery. Also of interest is recovery of those VOCs perceived as having significant economic value or posing environmental problems. The progressively phased project consists of: Phase I—Preliminary design and economic evaluation of a specific heat pump design for a specific VOC recovery application; Phase II—Final heat pump design, fabrication, and performance testing of the heat pump at the participant's facilities; and Phase III—Installation and long-term testing of the heat pump at an industrial site.—Funding in the amount of $343,000 is available for Phase I, and multiple awards are intended. At the conclusion of Phase I, and depending upon the availability of DOE funding, the most promising projects in terms of potential energy savings, innovativeness, and economics will be selected for continuation into Phase II and Phase III.

The DOE cost share is anticipated to be substantial in Phase I and decrease in Phases II and III. No profit or fee shall be paid to the participant(s).—DOE reserves the right to proceed with the second Phase or stop with completion of the first phase based upon the results of Phase I and complimentary work conducted by DOE. The period of performance for Phase I will be approximately 12 months. Commercial or industrial firms, individuals, research institutions, nonprofit organizations, or educational institutions are invited to respond.

DATES: Solicitation for Cooperative Agreement Proposal (SCAP) No. DE–SC07–88ID12707 is expected to be issued in November 1987 with a closing date approximately 60 days from the issue date.

CONTACT: Requests for a copy of the SCAP must be submitted in writing to the following address. U.S. Department of Energy, Idaho Operations Office, ATTN: T. Wade Hillebrant, Contracts Management Division, 785 DOE Place, Idaho Falls, ID 83402.

Issued at Idaho Falls on November 4, 1987.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 87–26895 Filed 11–20–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order With Sun Company Inc.

AGENCY: Economic Regualtory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Sun Company Inc. (Sun) shall be made a final order of the DOE. The Consent Order resolves issues of compliance by Sun with the Federal petroleum price and allocation regulations concerning the production and sale of crude oil for the period July 1, 1980 through December 31, 1980, from the B. Benson, Boyd Conglomerate Unit and O. L. Wilson properties respectively located in the states of Montana, Texas and Mississippi. Sun will pay to DOE the sum of $2,500,000 within sixty (60) days of the effective date of the Consent Order. DOE will deposit funds in a suitable account and petition OHA to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the monies in a manner consistent with the Statement of Restitutionary Policy in Crude Oil cases adopted by DOE in 51 FR 17899, August 4, 1987. The decision to make the Sun Consent Order final was made after a review of all written comments received.

FOR FURTHER INFORMATION CONTACT: Alan R. Fedman, Office of the Solicitor (RG–43), Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2856.

SUPPLEMENTARY INFORMATION:

I. Introduction

ERA previously issued a notice announcing a proposed Consent Order between DOE and Sun which would resolve matters relating to compliance by the firm with the federal petroleum price and allocation regulations for the period July 1, 1980 through December 31 1980 relating to the production and sale of crude oil from the B. Benson, Boyd Conglomerate Unit and O. L. Wilson properties (52 FR 31067, August 19, 1987). The proposed Consent Order required Sun to pay $2,500,000.00 within sixty (60) days of the effective date of the Consent Order. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received comments submitted by the Controller of the State of California, and by Farmers Union Central Exchange Inc. (Cenex), a working interest owner in one of the properties which is subject to the settlement. The Controller of the State of California stated that the Controller had no objection to the Consent Order and commended the inclusion of the provision in the agreement directing that the monies received from Sun be distributed in accordance with the Statement of Restitutionary Policy adopted by DOE. Cenex stated that it was neither a party nor a participant in the litigation being settled by the Consent Order and that, accordingly, Cenex need not consent to the agreement.

These comments do not object to the basis of the settlement, the adequacy of the amount received from Sun, or any provision of the Consent Order. For this reason, and for the reasons set forth in the Notice of the Proposed Consent Order, ERA has decided to finalize the Consent Order with Sun.

III. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Sun and DOE shall become a final order of the DOE. Pursuant to the terms of the agreement the Consent Order shall become final upon publication of this notice.

Issued in Washington, DC, on October 5, 1987.

Marshall A. Staunton,

Acting Solicitor, Economic Regulatory Administration.

[FR Doc. 87-26897 Filed 11-20-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commisson

[Docket No. ER87-464-001 et al.]

Detroit Edison, et al.; Electric Rate and Corporate Regulation Filings

November 17, 1987.

Take notice that the following filings have been made with the Commission:

1. Detroit Edison

[Docket Nos. ER87-464-001]

Take notice that on November 9, 1987, Detroit Edison tendered for filing pursuant to Commission letter dated September 25, 1987 a compliance report setting forth certain information with regard to amounts collected in excess of the settlement rate levels approved by the Commission.

Detroit Edison states that no amounts have been either billed or collected by any party in excess of settlement rate levels and therefore there are no amounts to be refunded.

Comment date: December 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas and Electric Company

[Docket No. ER83-628-000]

Take notice that on November 9, 1987, Kansas Gas and Electric Company (KGE) tendered for filing pursuant to Commission letter dated September 25, 1987, a compliance report showing the amount refunded to each city subject to a reduced customer charge.

Copies of this filing have been served upon all affected parties to this proceeding.

Comment date: December 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Utilities Company

[Docket No. ER88-11-000]

Take notice that on November 9, 1987, Kentucky Utilities Company (KU) tendered for filing an amended filing to a previously noticed unilateral filing for an amendment to the Interconnection Agreement between KU and Tennessee Valley Authority (TVA) which agreement is designated KU Rate Schedule FERC No. 93. KU states that the filing is in compliance with § 35.23 of the Commission's Regulations as promulgated by Order 84.

KU states that copies of the filing have been sent to TVA and to the Public Service Commission of Kentucky.

Comment date: December 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. System Energy Resources, Inc.

[Docket No. ER82-616-004]

Take notice that on November 9, 1987, System Energy Resources, Inc. (SERI) tendered for filing pursuant to Commission letter dated July 14, 1987, a compliance report concerning refunds of interest resulting from SERI's initial contribution to a Neclear Decommissioning Trust Fund for Grand Gulf Unit No. 1.

Copies of this filing were served upon all parties affected by this proceeding.

Comment date: December 1, 1987, in accordance with Standard Paragraph E at the end of this document.

5. UtiliCorp United Inc. d/b/a Missouri Public Service

[Docket No. ER88-89-000]

Take notice that on November 9, 1987, UtiliCorp United Inc. d/b/a Missouri Public Service (MPS) tendered for filing proposed changes in its FERC Electric Service Tariffs for wholesale firm power service to supersede and replace those rate provisions of contract rate schedules presently in effect and on file with the Commission which relate to eight wholesale customers located in the state of Missouri as follows:

Wholesale customers	Superseding and replacing
1. City of El Dorado Springs.	Supplement No. 1 to FERC Rate Schedule No. 48.
2. City of Galt	Supplement No. 14 to FERC Rate Schedule No. 38.
3. City of Gilman City.	Supplement No. 5 to FERC Rate Schedule No. 46.
4. City of Harrisonville.	Supplement No. 14 to FERC Rate Schedule No. 39.
5. City of Liberal	Supplement No. 14 to FERC Rate Schedule No. 36.
6. City of Odessa	Supplement No. 5 to FERC Rate Schedule No. 47.
7. City of Pleasant Hill.	Supplement No. 14 to FERC Rate Schedule No. 34.
8. City of Rich Hill.	Supplement No. 1 to FERC Rate Schedule No. 49.

The proposed changes would decrease revenues from jurisdictional sales and service by $209,452 based on the adjusted twelve month period ended September 30, 1983. The purpose of filing the proposed Municpalities-Resale Rate Schedules is to voluntarily reduce rates under section 205 of the Federal Power Act, including particularly § 35.27 of the Commission's regulations thereunder, to reflect the reduction in the Federal corporate income tax rate from 46% to 34% pursuant to the Tax Reform Act of 1986. MPS requests that waiver of Section 35.3 of the Commission Regulations be granted and that the proposed rate schedule changes be made effective July 1, 1987.

Copies of the filing were served upon the eight Municipalities-Resale customers whose rates and charges would be affected thereby, and upon the Public Service Commission of Missouri.

Comment date: Deceber 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26935 Filed 11-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-9]

Electric Consumers Protection Act, Section 8(d); Availability of Draft Staff Report and Request for Comments

November 18, 1987.

In accordance with section 8(d) of the Electric Consumers Protection Act of 1986, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has prepared a draft staff report entitled "PURPA Benefits at New Dams and Diversions." The study evaluates the environmental and economic effects of applying the benefits of section 210 of the Public Utility Regulatory Policies Act to hydroelectric projects at new dams and diversions. The final study report will be part of the record from which the Commission will make its recommendation to Congress on the continuation of PURPA benefits to projects at new and diversions.

Agencies, organizations, and individuals are invited to file comments on the draft study report. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers for substance should be supported by appropriate documentation.

Copies of the draft staff report are available from the Commission's Public Reference and Files Maintenance Branch, Room 1000, 825 N. Capitol Street NE., Washington, DC 20426.

Comments should be filed within 45 days from the date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426. Please affix Docket No. EL87-9 to all comments.

For further information, please contact Alan Mitchnick at 202-376-9061, or Patricia Aspland at 202-376-9623.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26934 Filed 11-20-87; 8:45 am]

BILLING CODE 6717-01-M

Grants: Advanced Coal Research Support Program, Solicitation; Restriction of Eligibility

AGENCY: Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of restriction of eligibility for the program solicitation for support of Advanced Coal Research at U.S. Colleges and Universities.

SUMMARY: The DOE announces that pursuant to 10 CFR 600.7(b) it intends to conduct a Competitive Program Solicitation to award, on a restricted eligibility basis, grants to U.S. colleges, universities and university-affiliated research institution in support of advanced coal research. The grants will be awarded to a limited number of proposals selected on the basis of scientific merit, subject to the availability of funds.

Text

Since the inception of the University Coal Research Program in FY-80 (by Congressional direction) it has been DOE's intent to maintain and upgrade educational, training and research capabilities of our universities and colleges in the fields of science and technology related to coal. The involvement of professors and students to generate fresh research ideas and ensure a future supply of coal scientists and engineers is a key purpose of this program. To assure continued achievement of these goals, U.S. colleges, universities, and university-affiliated research institutions may submit applications in response to this annual solicitation, provided the following criteria are met: (1) the Principal Investigator listed on the application is a teaching professor at the submitting university, (2) at least one student registered at that university is to receive compensation for work performed in the conduct of research proposed in the application, and (3) proposals from the university-affiliated research institutions are submitted through the college or university with which they are affiliated. As long as these conditions are met, other participants, Co-Principal Investigators or research staff who do not hold teaching or student positions may be included as part of the research team.

All applications must relate to coal research in one of the following seven technical categories:

(1) *Coal science.* Structure, characteristics, and reactivity of coal and coal-derived materials; nature of the oxygen-, nitrogen-, and sulfur-bonding in coal; geochemical and geophysical properties of coal; weathering of coal during preparation, transport, and storage; analytical techniques and instruments applicable to coal, coal mineral matter, and coal derived material.

(2) *Coal surface science:* Surface properties of coal and mineral matter pertinent to cleaning, conversion, and utilization; surface enhanced beneficiation; dewatering and pelletizing of fine coals; stabilization of coal-oil/coal-water slurries.

(3) *Reaction chemistry:* Fundamental research directed toward an understanding of organic and inorganic chemistry of coal with respect to catalyzed and uncatalyzed conversion and utilization; chemical coal cleaning; biochemical coal gasification, liquefaction, and desulfurization; novel reactions for deploymerizing coal; chemical reactions in supercritical fluids; fuel cell chemistry.

(4) *Advanced process concepts:* Improved coal conversion and utilization process concepts through novel chemistry and/or reactor systems.

(5) *Engineering fundamentals and thermodynamics:* The effect of temperature and/or pressure on transport phenomena with or without chemcial reactions; measurement and correlation of thermodynamic and transport properties pertinent to coal conversion and utilization; supercritical phase behavior.

(6) *Environmental science:* Chemistry of formation and/or elimination of pollutants arising from coal conversion and utilization reactions; formation, transport, and collection/removal of particulates from aerosols.

(7) *High temperature phenomena:* Physical and chemical phenomena at high temperatures associated with combustion and gasification of coal and with electromagnetic generation of power; vaporization of alkalis and ash fusion in coal conversion and utilization processes; high temperature sulfur and particulate removal; membrane separations.

Awards

DOE anticipates awarding grants for each project subject to the availability of funds. Approximately $4.1 million is expected to be available for the program solicitation, which includes $500 thousand for Historically Black Colleges and Universities, and which should provide support for approximately 22 proposals.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 900-33, Pittsburgh, PA 15236. Attn: Dona G. Sheehan.

Sun W. Chun,

Director.

[FR Doc. 87-26896 Filed 11-20-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CI64-423-000, et al.]

Tenneco Oil Co. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

November 17, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearings.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure Base
CI64-423-000, D, Nov. 4, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Transwestern Pipeline Company, Mocane-Laverne Field, Beaver and Ellis Counties, Oklahoma.	(1)	
CI88-97-000, (CI76-739), B, Nov. 3, 1987.	.....do.....	ANR Pipeline Company, Cheyenne Valley Field, Major County, Oklahoma.	(2)	
CI74-421-003, D, Nov. 9, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Transcontinental Gas Pipe Line Corp., West Cameron 41 Field, Offshore Louisiana.	(3)	
G-8817-002, D, Nov. 9, 1987.	.....do.....	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Burrwood Field, Plaquemines Parish, Louisiana.	(4)	
G-13222-001, D, Nov. 9, 1987.	.....do.....	Southern Natural Gas Company, Bayou Villars Field, Jefferson & Charles Parishes, Louisiana.	(5)	
CI88-93-000, F, Nov. 4, 1987.	Pennzoil Company, P.O. Box 2967, Houston, Texas 77252-2967.	United Gas Pipe Line Company, East McFaddin Field, Victoria County, Texas.	(6)	
CI88-96-000, F, Nov. 5, 1987.	Terra Resources, Inc., P.O. Box 2329, Tulsa, Oklahoma 74101.	Mountain Fuel Resources, Inc., West Pine Canyon 40-31, S.E. S.E. Sec. 31-T23N-R103W, Sweetwater County, Wyoming.	(7)	
G-18236-001, D, Nov. 5, 1987.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Transwestern Pipeline Company, NW/4 NE/4 Sec. 19-21N-25W, Ellis County, Oklahoma.	(8)	

Footnotes:

[1] Tenneco sold certain acreage to Foran Oil Company and Mesa Operating Limited Partnership, effective 12-1-86.

[2] Tenneco sold certain acreage to Star Production, Inc., effective 12-1-86.

[3] Acreage has been assigned to Tenneco Oil Company, effective 1-1-86.

[4] Acreage has been assigned to S. Parish Oil Company, effective 8-24-87.

[5] Acreage has been assigned to Canlan Oil Company, effective 4-1-87.

[6] By Assignment dated 6-1-87, effective 6-1-87, Pennzoil acquired certain acreage from BHP Petroleum (Americas) Inc., and BHP Petroleum Company.

[7] Effective 9-1-87, Terra Resources, Inc. acquired certain acreage from Union Pacific Resources Company.

[8] By Assignment of Oil and Gas Leases and Bill of Sale executed 5-27-87, effective 4-1-87, Cities Service sold all of its wells and assigned its interest in the oil and gas leases 50% to Westlake Producing Company Profit Sharing Plan and 50% to Orion Natural Resources Corporation.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-26936 Filed 11-20-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF88-64-000]

LaJet Energy Co.; Application for Commission Certification of Qualifying Status of Cogeneration Facility November 13, 1987

On October 30, 1987, LaJet Energy Company (Applicant), of 3130 Antilley Road, P.O. Box 3599, Abilene, Texas 79604 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in San Diego County, California. The facility will consist of two (2) diesel engine generator sets, and an evaporator. Thermal energy recovered from the facility will be used to produce potable distilled water for commercial distribution and sale, and for sale to Solar Partners in the form of heated distilled water vapor. The net electric power production capacity of the facility will be 1.9 MW. The primary energy source will be number 2 diesel fuel oil. Installation of the facility will begin in May, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26937 Filed 11-20-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CI88-54-000 and CI88-66-000]

Permian Operating Limited Partnership et al.; Joint Applications for Permanent Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

November 17, 1987.

Take notice that on October 23, 1987, as supplemented on November 2, 9 and 16, Permian Operating Limited

Partnership (Permian) P.O. Box 1183, Houston, TX 77251–1183, filed an application in Docket No. CI88–66–000 requesting permanent abandonment of sales of gas from the Todd Ranch Processing Plant located in Crockett County, Texas, to El Paso Natural Gas Company (El Paso). In addition, Permian states that it is also filing jointly with its producer-suppliers (Conoco, Inc., Petro-Tex Operating Company, Southland Royalty Company, T.E. Miller, Doris Adams, Bill J. Graham Oil & Gas, and Savage Oil Company) requesting permanent abandonment for such producer-suppliers who sell these volumes to Permian at the Todd Ranch Processing Plant under percentage-of-proceeds contracts. The application in Docket No. CI88–54–000 requests that Permian receive a blanket three-year limited-term certificate with pregranted abandonment for sales of the released gas to other purchasers in interstate commerce.

Permian states expedited relief is sought for the reason that takes of gas under the terms of the gas purchase contract dated March 30, 1961, have been substantially reduced without payment. The contract was terminated by the parties by letter agreement dated September 8, 1987, effective September 1, 1987. Deliverability is approximately 390 Mcf per day. The gas is NGPA section 104 flowing (4.2%), 104 Replacement (52.5%), 104 Replacement (small producer) (25.4%) and 108 Stripper (17.9%) gas and sales have been made under Permian's certificate issued in Docket No. CI87–810–000 and FERC Gas Rate Schedule No. 1. Permian requests that the applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85–1–000, at 18 CFR 2.77.[1] Permian requests waiver of Part 154 of the Commission's Regulations requiring the establishment of rate schedules, including § 154.94(h) and (k), for the blanket sales authority requested herein.

Since Permian has requested that the applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–26938 Filed 11–20–87; 8:45 am]

BILLING CODE 6717–01–M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

FEDERAL HOME LOAN BANK BOARD

Argo Federal Savings and Loan Association, Summit, IL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933 as amended, 12 U.S.C. 1464(d)(6)(A), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Argo Federal Savings and Loan Association, Summit, Illinois, on November 17, 1987.

Dated: November 17, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–26904 Filed 11–20–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010382–013.

Title: Argentina/U.S. Gulf Ports Agreeement.

Parties:

Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
American Transport Lines, Inc.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Reefer Express Lines Pty. Ltd.
Transportacion Maritima Mexicana S.A.

Synopsis: The proposed amendment would provide for a new pool period beginning October 1, 1987, and ending December 31, 1988. It would establish minimum sailing and port call requirements for the pool period, and would extend provisions governing the accounting of U.S. Gulf cargoes under alternate coast service and certain cargo accounting provisions until December 31, 1988.

Agreement No.,: 212–010386–012.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties:

Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
American Transport Lines, Inc.
Companhia de Navegacao Lloyd Brasileiro
Reefer Express Lines Pty. Ltd.
Van Nievelt, Gourdriaan & Co.

Synopsis: The proposed amendment would provide for a new pool period beginning October 1, 1987, and ending December 31, 1988. They would establish minimum sailing and port call requirements for the pool periods, and would extend provisions governing the accounting of U.S. Gulf cargoes under alternate coast service and certain cargo accounting provisions until December 31, 1988.

Agreement Nos.:

(1) 212–010388–009
(2) 212–010389–009

Titles:

(1) U.S. Atlantic Coast/Argentina Agreement
(2) U.S. Gulf Ports/Argentina

Agreement
Parties (1) & (2):
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
American Transport Lines, Inc.

Synopsis: The proposed amendment would provide for a new pool period beginning October 1, 1987, and ending December 31, 1988. They would establish minimum sailing and port call requirements for the pool periods, and would extend provisions governing the accounting of U.S. Gulf cargoes under alternate coast service and certain cargo accounting provisions until December 31, 1988.

Agreement No.: 202-010689-029.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Orient Overseas Container Line, Inc.

Synopsis: The proposed amendment would preclude a member line from using a maximum charge per container or per shipment in order to establish an otherwise prohibited per container rate. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 18, 1987.

[FR Doc. 87-26928 Filed 11-20-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank of New England Corp., Boston, MA; Application To Offer Investment Advice and Securities Brokerage Services on a Combined Basis to Institutional and Retail Customers

Bank of New England Corporation, Boston, Massachusetts ("Applicant" or "BNEC"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to expand the authority of its subsidiary, New England Discount Brokerage, Inc., Boston, Massachusetts ("Company"), to offer non-fee investment advice and securities brokerage services on a combined basis to both institutional and retail customers. Company also would provide discretionary investment management services for institutional customers only. (Such discretionary investment management services would not be provided for retail customers.) Company proposes to conduct the proposed activities from offices in Boston, Massachusetts and Hartford, Connecticut for affiliates and customers on a nationwide basis.

The Board previously has determined that the combined offering of investment advice with securities brokerage services to institutional customers from the same bank holding company subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) ("*NatWest*"); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin ____[1] (Order dated October 1, 1987) ("*Manufacturers Hanover*"). That position has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in its affirmance of the Board's *NatWest* Order. *Securities Industry Ass'n v. Board of Governors*, 821 F. 2d 810 (D.C. Cir. 1987), *petition for cert. filed*, 56 U.S.L.W 3303 (U.S. Oct. 5, 1987) (No. 87-562). The provision of discretionary investment management services for institutional customers is an activity previously approved by the Board in *J.P. Morgan and Company, Inc.*, 73 Federal Reserve Bulletin 810 (1987) ("*J.P. Morgan*").

Applicant's proposed activities differ from those previously approved by the Board in the *Manufacturers Hanover* and *J.P. Morgan* proposals in that the combination of investment advice and securities brokerage services will be offered to both retail and institutional customers, rather than limited to institutional customers with a minimum net worth of $1 million.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

BNEC believes that its proposed securities activities are closely related to banking essentially for the reasons previously espoused by the Board concerning the provision of similar activities to institutional customers in the Board's *NatWest*, *Manufacturers Hanover*, and *J.P. Morgan* Orders. BNEC believes that the combined offering of brokerage and investment advisory services for retail customers does not alter the operational characteristics of the combined services so that they lose their close functional connection to banking activities. Moreover, BNEC notes that the OCC has authorized operations subsidiaries of national banks to offer investment advisory services to retail securities brokerage customers. OCC Interpretive Letter No. 386 (June 19, 1987), *reprinted in* [Current] Fed. Banking L. Rep. (CCH) ¶ 85,610, at 77,932.

In determining whether an activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant contends that Company's conduct of the proposed activities will not result in any significant adverse effects, primarily for the reasons set forth by the Board in its *NatWest* Order, where the Board declined to find significant adverse effects in the conduct of similar activities. Applicant claims that the fact that the services in *NatWest* were provided only to institutional customers was not a material factor in the Board's analysis as reflected in its Order. Thus, according

[1] [Editorial Note: This page citation is not yet available]

to BNEC, there is no reason to believe that the inclusion of retail customers would alter the analysis found in *NatWest*. In Applicant's view, the type of customer to which the service is provided does not change the underlying permissibility of the activity.

BNEC also contends that these same arguments support the conclusion that the provision of full service brokerage services to retail customers in a nonbanking affiliate will not adversely affect any of its banking affiliates.

Furthermore, BNEC believes that, although institutional and high net worth individuals generally may be expected to have a sophisticated understanding of financial matters and alternative sources of advisory and brokerage services, this factor does not constitute evidence that the provision of full-service brokerage services to retail customers will result in the subtle hazards implicated by the Glass-Steagall Act. In that regard, Applicant argues that the fact that Company will not exercise investment discretion with respect to any retail accounts renders unlikely the potential for subtle hazards or adverse effects, such as churning.

Applicant also contends that the securities powers moratorium contained in the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552 (1987)) does not apply to its purely agency activities.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 22, 1987. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–26893 Filed 11–20–87; 8:45 am]

BILLING CODE 6210–10–M

First Woburn Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 18, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Woburn Bancorp, Inc.*, Woburn, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Woburn Five Cents Savings Bank, Woburn, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance Activities. Comments on this application must be received by December 9, 1987.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *American Bancorporation*, Wheeling, West Virginia; to acquire 100 percent of the voting shares of Wheeling National Bank, Wheeling, West Virginia.

2. **First National Cincinnati Corporation**, Cincinnati, Ohio; to acquire 100 percent of the voting shares of Aurora First National Bancorp, Aurora, Indiana, and thereby indirectly acquire The First National Bank of Aurora, Aurora, Indiana. Comments on this application must be received by December 9, 1987.

3. *NBM Bancorp, Inc.*, Montpelier, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Montpelier, Montpelier, Ohio.

4. *TrustCorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of Citizens Bank, Indianapolis, Indiana. Comments on this application must be received by December 11, 1987.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *ComSouth Bankshares, Inc.*, Columbia, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Bank of the South, N.A., Columbia, South Carolina, a *de novo* bank. Comments on this application must be received by December 11, 1987.

2. *Horizon Bancorp, Inc.*, Beckley, West Virginia; to acquire 100 percent of the voting shares of Crossroads National Bank, Bradley, West Virginia. Comments on this application must be received by December 11, 1987.

3. *Metropolitan Bancshares, Inc.*, Washington, DC; to become a bank holding company by acquiring 100 percent of the voting shares of Metropolitan Bank, National Association, the successor by merger to American Indian National Bank, Washington, DC.

4. *NCNB Corporation*, Charlotte, North Carolina; to acquire up to 55 percent of the voting shares of Charter Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Charter National Bank-Colonial, Houston, Texas; Charter National Bank-Houston, Houston, Texas; Charter National Bank-Southwest, Houston, Texas; Charter National Bank-Willowbrook, Houston, Texas.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First American Corporation*, Nashville, Tennessee; to acquire 100 percent of the voting shares of First Roane County Bancorp, Inc., Rockwood, Tennessee, and thereby indirectly acquire First National Bank and Trust, Rockwood, Tennessee.

2. *Southeast Banking Corporation*, Miami, Florida; to acquire 100 percent of the voting shares of First City Bancorp, Inc., Gainesville, Florida, and thereby indirectly acquire First City Bank of Gainesville, Gainesville, Florida.

3. *Southern Bank Holding Company, Inc.*, Longwood, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Bank of Central Florida, Longwood, Florida, a *de novo* bank. Comments on this application must be received by December 11, 1987.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Longview Capital Corporation*, Newman, Illinois; to acquire 100 percent

of the voting shares of Chrisman Bancshares, Inc., Chrisman, Illinois, and thereby indirectly acquire State Bank of Chrisman, Chrisman, Illinois. Comments on this application must be received by December 11, 1987.

2. *Landmark Bancshares Corporation,* St. Louis, Missouri, and Landmark Acquisition Corporation, St. Louis, Missouri; to acquire 100 percent of the voting shares of Taney County Bancorporation, Kansas City, Missouri, and thereby indirectly acquire Security Bank and Trust Company, Branson, Missouri. Comments on this application must be received by December 9, 1987.

F. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wes-Tenn Bancorp, Inc.,* Covington, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Tipton County Bank, Covington, Tennessee.

G. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *UP Financial, Inc.,* Ashland, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Ontonagon, Ontonagon, Michigan.

H. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charter Bancorporation,* Englewood, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Charter Bank and Trust, Englewood, Colorado. Comments on this application must be made by December 11, 1987.

I. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Citizens Holdings,* Newport Beach, California; Ormside Proprietary Limited, Melbourne, Australia; Overseas Finance Holdings Proprietary Limited, Melbourne, Australia; Aylworth Proprietary Limited, Melbourne, Australia; Costa Mesa Limited, London, England; Costa Mesa Holding N.V., Curacao, Netherlands Antilles; and Citizens Financial Holdings, B.V., Amsterdam, Netherlands; to acquire 100 percent of the voting shares of El Camino Bank, Anaheim, California. Comments on this application must be made by December 11, 1987.

2. *FSB Bancorp,* Show Low, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Frontier State Bank, Show Low, Arizona. Comments on this application must be made by December 11, 1987.

3. *Security Pacific Corporation,* Los Angeles, California; to acquire 100 percent of the voting shares of American Asian Bancorp, San Francisco, California, and thereby indirectly acquire American Asian Bank, San Francisco, California.

4. *SVSB, Inc.,* Klamath Falls, Oregon; to become a bank holding company by acquiring at least 80 percent of the voting shares of South Valley State Bank, Klamath Falls, Oregon.

Board of Governors of the Federal Reserve System, November 17, 1987

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26894 Filed 11-20-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87G-0351]

Teepak, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 7G0332) has been filed on behalf of Teepak, Inc., proposing to affirm that 1,3-butylene glycol is generally recognized as safe (GRAS) for use in food.

DATE: Comments by January 22, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 7G0332) has been filed on behalf of Teepak, Inc., 915 North Michigan Ave., Danville, IL 61832-0597, proposing to affirm that 1,3-butylene glycol is GRAS for use in food.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before January 22, 1988, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 12, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-26925 Filed 11-20-87; 8:45 am]

BILLING CODE 4160-01-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30065]

Bigbee Transportation, Inc.; Transportation Within Alabama, Mississippi, and Georgia; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: Bigbee Transportation, Inc. (Bigbee), a motor common and contract carrier, seeks institution of a declaratory order proceeding to determine whether transportation of petroleum and petroleum products from pipeline terminals in Meridian, MS, Moundville, AL and Doraville, GA, to points in the same State as the origin terminal is interstate or intrastate in nature. The product moves by pipeline across State lines to the terminal facilities. From the

terminal the product moves by motor vehicle to customer locations. Bigbee desires to perform the motor carrier movement under its interstate authority.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by December 8, 1987. A service list will then be prepared. Bigbee will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will have 35 days from the service date of the service list to submit their comments to the Commission and to petitioner's representative. Petitioner will have 50 days from the service date of the list to reply.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to Docket No. MC–C–30065 to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Send one copy of comments to petitioner's representative:

Norman J. Philion, 1920 N Street NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT:

Judy Barnes (202) 275–7962

or

Mark Shaffer (202) 275–7691

[Assistance for the hearing impaired, (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. Copies of the decision are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission Headquarters).

Decided: November 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–26910 Filed 11–20–87; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 394 (Sub-No. 4)]

Cost Ratio for Recyclables; 1987 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Modification of maximum revenue-to-variable cost (r/vc) ratio for recyclables and clarification of effective date.

SUMMARY: The Commission is modifying the 1987 r/vc ratio previously calculated in the August 25, 1987, decision in this proceeding. The Commission clarifies that the new ratio of 149.8 percent will apply to all nonferrous recyclables movements during the 1987 calendar year.

EFFECTIVE DATE: On December 14, 1987, unless comments are received challenging the accuracy of the new ratio, in which case a further decision will issue.

ADDRESS: An original and 15 copies of comments should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354; Jereal E. Evans (202) 275–7354; Joseph A. Heberle (202) 275–7371, [TDD for hearing impaired; (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD services (202) 275–1721).

Environment and Energy

This action will not significantly affect either the quality of the human environment or energy conservation.

Regulatory Flexibility

This action will not have a significant economic impact on a substantial number of small entities because it does not change any rules but merely updates the ratio calculated under the existing rules.

Authority: 49 U.S.C. 10321(a), 10731; 5 U.S.C. 553. Decided: November 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–26909 Filed 11–20–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 293X)]

Burlington Northern Railroad Co.; Abandonment Exemption; Fall River and Custer Counties, SD

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Burlington Northern Railroad Company of 41.63. miles of track in Fall River and Custer Counties, SD subject to historic preservation and standard labor protective conditions.

DATES: This exemption is effective on December 23, 1987. Petitions to stay must be filed by December 8, 1987, and petitions for reconsideration must be filed by December 18, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub–No. 293X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

(2) Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–1721. [TDD for the hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: November 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–26838 Filed 11–20–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 208X)]

CSX Transportation, Inc.; Exemption; Abandonment in Atlanta, Fulton County, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of approximately .3 miles or 1,638 feet of track in Atlanta, Fulton County, GA, subject to standard labor protective conditions.

DATES: This exemption will be effective on December 30, 1987. Petitions to stay must be filed by December 3, 1987, and petitions for reconsideration must be filed by December 14, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 208X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for the hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: November 16, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noretta R. McGee,

Secretary.

[FR Doc. 87-26837 Filed 11-20-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 70)]

Missouri Pacific Railroad Co.; Abandonment In Woodson and Allen Counties, KS; Findings

The Commission has issued a certificate authorizing Missouri Pacific Railroad Company to abandon its 7.94-mile rail road between Iola (milepost 366.06) and Piqua (milepost 374.0) in Woodson and Allen Counties, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26778 Filed 11-20-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[Civil Action No. C87-2866Y]

Lodging of Consent Decree Pursuant To CERCLA; Horodyski Brothers & Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 3, 1987, a proposed consent decree in *United States v. Horodyski Brothers & Co.*, Civil Action No. C87-2866Y was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree resolves a judicial enforcement action brought by the United States against the Horodyski Brothers & Co., Walter Horodyski, General Motors Corporation, American Gage & Machine Co., Denman Rubber Manufacturing Co., Browning Ferris Industries, Inc., Aeroquip Corporation, General Electric Co., Anthony Dicenszo, and Fisher Foods for the recovery of certain clean up costs pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(a).

The proposed consent decree requires the defendants to pay the sum of one hundred, forty-five thousand dollars ($145,000.00) to the United States government to cover the cost of cleaning up contamination by hazardous substances of property owned by the Army Corps of Engineers located in Trumball County, Ohio and known as the Shenango Lake Project.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Horodyski Brothers & Co.*, D.J. Ref. 90-11-2-79.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-26891 Filed 11-20-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Horace R. Leverette, D.D.S.; Revocation of Registration; Denial of Application

On April 22, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Horace R. Leverette, D.D.S., of 909 West Esplanade, Suite 110, Kenner, Louisiana 70065, an Order to Show Cause proposing to revoke Dr. Leverette's DEA Certificate of Registration, AL3403336, and deny his pending application for renewal of that registration dated March 31, 1986. The statutory bases for the Order to Show Cause were that Dr. Leverette is no longer authorized to handle controlled substances in the State of Louisiana, and that he had been convicted of felony offenses relating to controlled substances.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Leverette's agent on April 27, 1987. There was no response to the Order to Show Cause within the allotted thirty-day period. Therefore, the Administrator concludes that Dr. Leverette has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the record as it appears.

The Administrator finds that in February 1985, Horace Leverette was arrested by the Jefferson Parish, Louisiana, Sheriff's Department. He was charged with drug distribution. On September 24, 1985, Horace Leverette appeared before the Twenty-Fourth Judicial District Court of Jefferson Parish, Louisiana, and pled guilty to four counts of distribution of controlled dangerous substances in violation of Louisiana Revised Statute 40:967. On

January 22, 1986, he was sentenced to imprisonment at hard labor for a term of five years on each count. Execution of the sentence was suspended and Horace Leverette was placed on five years active probation and fined.

Based on Horace Leverette's felony convictions relating to controlled substances, there is a lawful basis for the revocation of his DEA Certificate of Registration. See 21 U.S.C. 824(a)(2); *Fitzhugh* v. *D.E.A.*, 813 F.2d 1248 (D.C. Cir. 1987).

The Administrator also finds that on January 9, 1987, the State of Louisiana, Department of Health and Human Resources, Division of Licensing and Certification, permanently revoked Dr. Leverette's license to prescribe, dispense or administer Schedule II through V controlled substances. The Drug Enforcement Administration does not have the statutory authority under the Controlled Substances Act to register a practitioner unless he is authorized to prescribe or dispense controlled substances under the laws of the state in which he practices. The Administrator has consistently so held. See *Tony's Discount Drug Store*, Docket No. 85–60, 51 FR 70 (1986); *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985).

The Administrator concludes that there is a lawful basis for the revocation of Dr. Leverette's DEA Certificate of Registration and denial of his pending application for renewal of that registration. Due to Dr. Leverette's lack of authorization to prescribe, administer, dispense, or otherwise handle controlled substances in Louisiana, the registration must be revoked, and the application denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AL3403336, previously issued to Horace Leverette, D.D.S., be, and it hereby is revoked. The Administrator further orders that Horace R. Leverette's application for renewal of his DEA Certificate of Registration, executed on March 31, 1986, be, and it hereby is denied. This order is effective December 23, 1987.

John C. Lawn,

Administrator.

Dated: November 17, 1987.

[FR Doc. 87-26926 Filed 11-20-87; 8:45 am]

BILLING CODE 4410-09-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-49]

Unfair Trade Practices; Brazil's Informatics Policy

AGENCY: Office of the United States Trade Representatives.

ACTION: Request for public comment on possible U.S. actions in response to certain Brazilian unfair trade practices.

SUMMARY: The section 301 Committee will conduct a public hearing on possible U.S. actions in response to actions by the Government of Brazil that contravene certain understandings reached as a result of the section 301 investigation of Brazil's informatics policy.

FOR FURTHER INFORMATION CONTACT: Christina Lund, Director for Brazil and Southern Cone Affairs, Office of the U.S. Trade Representative (USTR), 600 17th Street NW., Washington, DC 20506, (202) 395–5190; or Marian Barell, Deputy Assistance U.S. Trade Representative for Industry, USTR, (202) 395–7271.

Background

On September 16, 1985, the U.S. Trade Representative initiated an investigation under section 302 of the Trade Act of 1974, as amended ("Act"), of Brazil's informatics (computer and computer-related products) policy, including its market reserve practices, administrative burdens on imports, prohibition of foreign investment, and lack of copyright protection for computer software (50 FR 37608).

On October 6, 1986, the President determined under section 301 of the Act that the Government of Brazil has engaged in acts, policies and practices with respect to informatics products that are unreasonable and burden or restrict United States commerce (51 FR 35993). On December 30, 1986, the President suspended those parts of the investigation concerning administrative procedures and market reserve, based in part on the Government of Brazil's commitment not to extend its market reserve practices to new areas, or beyond 1992 (52 FR 1619). On June 30, 1987, the President suspended the intellectual property portion of that investigation, based on progress in Brazil toward adequate and effective copyright protection for computer software, as reflected in the recent passage by the Brazilian Chamber of Deputies (its lower house of Congress) of a bill providing adequate protection (52 FR 24971).

In September 1987, the Brazilian Secretariat for Informatics (SEI) rejected agreements negotiated between: (1) A U.S. company that holds the copyright on the world's leading computer software operating system for personal computers, and (2) six Brazilian informatics companies seeking a license to use that software system. SEI rejected those licensing agreements on the basis of a determination that a Brazilian-made "functional equivalent" to the operating system exists for use by Brazilian informatics companies. The SEI determination contravenes the above-described understandings reached between the U.S. Government and the Government of Brazil that provided a basis for the President's June 30, 1987 decision to suspend the intellectual property portion of the investigation. Specifically, SEI's decision violates understandings that SEI's interpretation of "functionally equivalent" software would be objective. It establishes a precedent that effectively bans U.S. companies from the Brazilian software market. Except for mainframe and similar computers, U.S. companies are already prohibited from participating in the Brazilian hardware market.

In response to the contravention of these understandings, the United States is considering increasing customs duties or otherwise restricting the importation of products of Brazil having a value comparable to the lost sales opportunities for U.S. companies. We estimate the comparable value to be about $105 million. The United States is also considering prohibiting imports of Brazilian informatics products covered under Brazil's market reserve policy.

The products being considered for increased duties or other import restrictions are listed in the annex to this notice. With respect to increasing customs duties, the Administration generally is considering an increase to 100 percent *ad valorem*.

The annex lists products in terms of the nomenclature of the current Tariff Schedules of the United States (TSUS). Inasmuch as the target date for implementation of the Harmonized System tariff nomenclature by the United States is January 1, 1988, a supplemental notice will be issued giving the corresponding product categories in the nomenclature of the proposed Harmonized Tariff Schedules of the United States.

Under section 301 of the Act, the President is authorized to take all appropriate and feasible action within his power to obtain the elimination of an act, policy or practice of a foreign government or instrumentality that

denies the U.S. benefits under, or is inconsistent with, a trade agreement; or is otherwise unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce. Section 301(b)(2) expressly authorizes the President to impose duties or other import restrictions on the goods of a foreign country or instrumentality for such time as he deems appropriate. Measures under section 301 may be taken on a discriminatory or nondiscriminatory basis, at the discretion of the President.

Public Hearing

The Section 301 Committee will hold a hearing at 9:30 a.m. on December 18, 1987, regarding products of Brazil listed in the attached annex that may be subject to increased U.S. customs duties or other import restrictions for the reasons explained above. The Committee will consider public comments in recommending any action under section 301 to the U.S. Trade Representative for his recommendation to the President. In particular, the Section 301 Committee seeks interested persons's assessment of: (1) The appropriateness of the products being considered for possible retaliation; (2) the levels at which U.S. customs duties or other import restrictions should be set; and (3) the degree to which increased duties or other import restrictions might have an adverse impact on U.S. consumers of the products concerned.

The hearings will be held in the main auditorium on the first of the General Services Administration, 18th and F Streets, NW. Interested persons wishing to testify orally must provide written notice of their intention by noon on December 10, to Carolyn Frank, USTR, Room 521, 600 17th Street NW., Washington, DC 20506. In addition, they must provide the following information: (1) Their names, addresses and telephone numbers; and (2) a summary of their presentation, including the products, with Tariff Schedules of the United States item numbers, to be discussed.

Persons presenting oral testimony must submit a complete written statement in 20 copies by noon, December 14, to Carolyn Frank at the above address. Remarks at the hearing will be limited to no more than 10 minutes.

Persons not wishing to participate in the hearing may submit a written statement in 20 copies by noon, December 14. All written comments must be filed in accordance with 15 CFR 2006.8.

Judith Hippler Bello,

Chairman, Section 301 Committee.

Annex

Articles, the product of Brazil, classified in the following provisions of the Tariff Schedules of the United States (TSUS), are being considered for increased duties or other import restrictions:

BILLING CODE 3190-01-M

Annex

Articles, the product of Brazil, classified in the following provisions of the Tariff Schedules of the United States (TSUS) are being considered for increased duties or other import restrictions:

TSUS or TSUSA 1/ item number	Article
	[The bracketed language in this list is included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.]
	Hardboard, whether or not face finished:
	Not face finished; and oil treated, whether or not regarded as tempered, but not otherwise face finished:
245.00	Valued not over $48.33-1/3 per short ton
245.10	Valued over $48.33-1/3 but not over $96.66-2/3 per short ton
245.20	Valued over $96.66-2/3 per short ton
	Coal tar, crude (including crude blast-furnace tar, crude oil-gas tar, and crude water-gas tar), and organic chemical products found naturally in coal tar, whether produced or obtained from coal tar or other source:
401.10	Benzene
	Products obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4, of the TSUS:
	Pesticides:
	Not artificially mixed:
	Herbicides (including plant growth regulators):
	[Articles provided for in items 408.17 and 408.18]
	Other:
	[Products provided for in the Chemical Appendix to the Tariff Schedules]
408.23	Other

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

TSUS or TSUSA 1/ item number	Article
	Ceramic tiles:
	Floor and wall tiles:
	[Mosaic tiles]
	Other:
532.24	Glazed
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:
533.11	Of coarse-grained earthenware, or of coarse-grained stoneware
533.15	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt
	Of fine-grained earthenware (except articles provided for in item 533.15) or of fine-grained stoneware:
533.20	Hotel or restaurant ware and other ware not household ware
	Household ware available in specified sets:
533.22	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart 2C, schedule 5, of the TSUS, is not over $38
533.24	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of subpart 2C, schedule 5, of the TSUS, is over $38

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Articles chiefly used for preparing, serving, etc. (con.):
	Of fine-grained earthenware, etc. (con.):
	Household ware not available in specified sets:
533.29	Steins with permanently attached pewter lids
533.30	Mugs and other steins
533.32	Candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers, and salt and pepper shaker sets
533.34	Cups valued over $5.25 per dozen; saucers valued over $3 per dozen; soups, oatmeals, and cereals valued over $6 per dozen; plates not over 9 inches in maximum diameter and valued over $6 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $8.50 per dozen; platters or chop dishes valued over $35 per dozen; sugars valued over $21 per dozen; creamers valued over $15 per dozen; and beverage servers valued over $42 per dozen
533.39	Other articles
535.31	Sanitary ware, including plumbing fixtures and bathroom accessories, all the foregoing, and parts thereof, of ceramic ware

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

TSUS or TSUSA 1/ item number	Article
	Ferroalloys:
	Ferrosilicon:
606.35	Containing over 8 percent but not over 60 percent by weight of silicon
	Containing over 60 percent but not over 80 percent by weight of silicon:
606.36	Containing over 3 percent by weight of calcium
606.37	Other
	Other base metals, unwrought, and waste and scrap of such metals:
	Other than alloys; and waste and scrap:
	Silicon:
632.42	Containing by weight not over 99.7 percent of silicon
	Industrial machinery, plant, and similar laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature, such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing, or cooling; instantaneous or storage water heaters, non-electrical; all the foregoing (except agricultural implements, sugar machinery, shoe machinery, and machinery or equipment for the heat-treatment of textile yarns, fabrics, or made-up textile articles) and parts thereof:
	[Instantaneous or storage water heaters, and parts thereof]
	Other:
661.67	Machinery for making cellulosic pulp, paper, or paperboard, and parts thereof

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Machine tools:
	Metal-working machine tools:
	[Machine tools for cutting or hobbing gears]
	Boring, drilling, and milling machines, including vertical turret lathes:
	[Drilling machines]
674.34	Other
674.35	Other
	Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism:
676.15	Accounting, computing, and other data-processing machines
676.22	Cash registers
676.30	Office machines not specially provided for
	Parts of office machines not specially provided for:
	[Typewriter parts]
676.54	Parts of automatic data-processing machines and units thereof, other than parts incorporating a cathode ray tube
	Other:
	[Parts of calculating machines, accounting machines, cash registers, postage-franking machines, ticket-issuing machines, all the foregoing machines incorporating a calculating mechanism; parts of electrostatic copying machines which transfer the image from an intermediate onto the copy material as in plain paper copiers (indirect process); parts of photocopying equipment]
	Other:
676.5675	Display units incorporating a cathode ray tube

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Electrical telegraph (including printing and typewriting) and telephone apparatus and instruments, and parts thereof:
	Telephone apparatus and instruments and parts thereof:
684.57	Telephone switching apparatus (including private branch exchange and key system switching apparatus), and parts and components thereof
684.58	Telephone sets and other terminal equipment and parts thereof
684.59	Other
	Other:
684.65	Switching apparatus and parts thereof
684.66	Terminal apparatus (including teleprinting and teletypewriting machines) and parts thereof
684.67	Other
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:
	[Television cameras, and parts thereof]
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:
	[Television apparatus and parts thereof]
	Other:
	Solid-state (tubeless) radio receivers:
	[Designed for motor vehicle installation]
	Other:
	[Entertainment broadcast band receivers]
685.16	Other
	Transceivers:
	[Citizen band; low power radiotelephonic transceivers operating on frequencies from 49.82 to 49.90 mHz]
685.24	Other transceivers
685.39	Telephone answering machines, and parts thereof

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone swithboards) and control panels; all the foregoing and parts thereof:
	Connectors:
	[Coaxial; cylindrical, multicontact; rack and panel; printed circuit]
685.9054	Other
	Electronic tubes (except X-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezo-electric crystals; all the foregoing and parts thereof:
	[Television picture tubes]
	Other:
	Cathode-ray tubes and parts thereof (including parts of television picture tubes):
687.5408	Parts of cathode-ray tubes (including parts of television picture tubes)
	Transistors and other related electronic crystal components; mounted piezo-electric crystals:
	[Transistors; diodes and rectifiers]
687.74	Monolithic integrated circuits
687.77	Other integrated circuits
687.79	Mounted piezo-electric crystals
687.81	Other
	Insulated (including enamelled or anodized) electrical conductors, whether or not fitted with connectors (including ignition wiring sets, Christmas-tree lighting sets with or without their bulbs, and other wiring sets):
	Without fittings:
	Containing (exclusive of insulation and sheathing) over 10 percent by weight of the metal copper:
688.0430	Coaxial cable

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Motor vehicles (except motorcycles) for the transport of persons or articles:
	[Automobile trucks valued at $1,000 or more, and motor buses]
692.10	Other
	Aircraft and spacecraft, and parts thereof:
	Civil aircraft; spacecraft; and parts of each of the foregoing:
694.41	Airplanes
	Footwear, of leather (except footwear with uppers of fibers):
	[Huaraches; McKay-sewed footwear; moccasins; turn or turned footwear; welt footwear; footwear with molded soles laced to uppers; slippers]
	Other:
700.35	For men, youths, and boys
	Luggage and handbags, whether or not fitted with bottle, dining, drinking, manicure, sewing, traveling, or similar sets; and flat goods:
	Of leather:
	[Flat goods]
	Luggage and handbags:
	[Of reptile leather]
	Other:
	Handbags:
706.07	Valued not over $20 each
706.09	Valued over $20 each
707.90	Optical fibers, whether or not in bundles, cables or otherwise put up, with or without connectors and whether mounted or not mounted
	Medical, dental, surgical and veterinary instruments and apparatus (including electro-medical apparatus and ophthalmic instruments), and parts thereof:
	[Optical instruments and appliances, and parts thereof:]
	Other:
	Electro-medical apparatus, and parts thereof:
	[Electro-surgical apparatus, and parts thereof]

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Medical, dental, surgical and veterinary instruments, etc. (con.):
	Other (con.):
	Electro-medical apparatus, etc. (con.):
	Other :
	[Therapeutic apparatus]
	Other apparatus:
	[Electrocardiographs]
709.1765	Electroencephalographs; Complete patient monitoring systems, incorporating component modules for monitoring such functions as temperature, blood pressure, and pulse
709.1770	Other
709.1790	Parts, not specially provided for
	Apparatus based on the use of X-rays or of the radiations from radioactive substances, whether for medical, industrial, or other uses, and parts thereof:
	X-ray apparatus and parts thereof:
	[X-ray tubes, and parts of tubes]
	Other:
709.6320	Apparatus for medical or dental use, and parts thereof
	Electrical measuring, checking, analyzing, or automatically-controlling instruments and apparatus, and parts thereof:
712.05	Optical instruments or apparatus, and parts thereof
	Other:
712.15	Instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or similar radiations, and parts thereof
	[Ships' logs, and depth-sounding instruments and apparatus, and parts thereof; seismographs, and parts thereof; anemometers, and parts thereof; automatic flight control instruments and apparatus designed for use in aircraft, and parts thereof]

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Electrical measuring, checking, analyzing, or automatically-controlling instruments, etc. (con.):
	Other (con.):
	Other:
	[Surveying (including photogrammetrical surveying), hydrographic, navigational, meteorological, hydrological, and geophysical instruments and parts thereof; machines and appliances for determining the strength of articles or materials under compression, tension, torsion, or shearing stress, and parts thereof;]
	[Hydrometers and similar floating instruments; thermometers, pyrometers, barometers, hygrometers, and psychrometers, whether or not recording instruments; any combination of the foregoing instruments; and parts thereof]
	[Instruments and apparatus to measure or check electrical quantities, and parts thereof]
712.4920	Balances of a sensitivity of 5 centigrams or better, with or without their weights, and parts thereof
712.4950	Pressure guages, thermostats, level guages, flow meters, heat meters, automatic oven-draught regulators, and other instruments and apparatus for measuring, checking, or automatically controlling the flow, depth, pressure or other variables of liquids or gases, or for automatically controlling temperature, all the foregoing (other than parts thereof), not specially provided for
712.4960	Polarimeters, refractometers, spectrometers, gas analysis apparatus and other instruments or apparatus for physical or chemical analysis; viscometers, porosimeters, expansion meters and other instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension, or similar properties; photometers (except photographic light meters), calorimeters, and other instruments or apparatus for measuring or checking quantities of heat, light, or sound; all the foregoing and parts thereof

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

TSUS or TSUSA 1/ item number	Article
	Sound recordings, and magnetic recordings, not provided for in the foregoing provisions of subpart G of part 2, schedule 7, of the TSUS:
724.40	Recorded on magnetic tape or on any medium other than wire
724.45	Magnetic recording media not having any material recorded thereon
	Furniture, and parts thereof, not specially provided for:
	Of wood:
	[Bent-wood furniture, and parts thereof]
	Other:
727.35	Furniture other than chairs
	Pistols, revolvers, rifles, shotguns, and combination shotguns and rifles, all the foregoing which are firearms designed to fire shot, pellets, or bullets (except firearms provided for in item 730.10):
	Pistols and revolvers:
730.15	Valued not over $4 each
730.17	Valued over $4 but not over $8 each
730.19	Valued over $8 each

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

[FR Doc. 87-27041 Filed 11-20-87; 8:45 am]
BILLING CODE 3190-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25132; File No. SR-NASD-87-52]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc.; Increase in SOES Size Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 10, 1987, the National Association Securities Dealers, Inc. ("NASD') filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends section (a)(7) of the Rules of Practice and Procedure for the Small Order Execution System ("SOES") to increase the maximum size of individual orders that may be entered through SOES.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This rule change amends section (a)(7) of the Rules of Practice and Procedures for SOES to provide for an increase in the maximum size of individual orders that may be executed through SOES. In Securities Exchange Act Release No. 25064, the Commission granted the President of the Corporation the authority to define the term "limited size" (from the period of October 23, 1987 until December 31, 1987) to mean any amount of shares between 300 and 1,000. Pursuant to this authority, from Monday, October 26, 1987 to November 6, 1987, the SOES execution size limits for both NASDAQ/NMS securities and NASDAQ non-NMS securities have been 500 shares. Because both market volatility and the extraordinarily high volume of trades occurring in the marketplace in the recent past have diminished, the President of the Corporation has determined to increase the SOES size limits at this time to 1,000 shares for NASDAQ/NMS Securities. The size limit for non-NMS NASDAQ Securities will remain at 500 shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 an subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsquent amendments, all written statements with respect to the proposed rule change that are filed with the Commmission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-87-52 and should be submittted by December 14, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: November 17, 1987.

[FR Doc. 87-26948 Filed 11-20-87; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Farmer Questionnaire—vicinity of Nuclear Power Plants.

Frequency of Use: Annually.

Type of Affected Public: Individuals or households, and farms.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1200.

Estimated Total Annual Burden Hours: 1200.

Need For and Use of Information: This survey is used to locate for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-26892 Filed 11-20-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-053]

Coast Guard Recreational Boating Survey

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Notice is hereby given that Office of Management and Budget (OMB) approval, under the Paperwork Reduction Act, is being sought for the collection of information on use of alcohol by recreational boaters. The information will be collected through voluntary participation in surveys at selected sites.

DATES: The request for OMB approval was submitted on November 18, 1987 and completion of the survey is tentatively scheduled for January 1989.

ADDRESSES: Copies of the Request for OMB Review (Standard Form 83) and supporting documentation are available for inspection and copying at Commandant (G-BP), U.S. Coast Guard Headquarters, Room 4224, 2100 Second Street, SW., Washington, DC 20593-0001. Persons desiring to comment on this information collection should send their comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard Headquarters address given above.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Boden at the Coast Guard Headquarters address given above; telephone (202) 267-0956 between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Improving recreational boating safety is a Coast Guard mission. During the fiscal year 1985 Department of Transportation appropriations hearings, the Senate Appropriations Subcommittee on Transportation received testimony from the National Transportation Safety Board (NTSB) regarding alcohol and recreational boating. As a result of that testimony, the Senate directed the Coast Guard to shift $500,000 to enhance research on alcohol in recreational boating.

One of the Coast Guard's tasks is determining the risk associated with elevated Blood Alcohol Concentrations (BAC) and recreational boating. This survey will provide information enabling the Coast Guard to compare the numbers of boaters at various BAC levels to the numbers of fatalities at various BAC levels and determine this risk. Voluntary interviews and breath tests will be administered to about 2000 boaters at selected ramps or marinas on bodies of water where recreational boating fatalities have occurred. This design is similar to that used in establishing the risk in the highway environment.

Without this information, the risk associated with alcohol in recreational boating cannot be determined, and the seriousness of this hazard to boating safety cannot be assessed.

Dated: November 18, 1987.

M. E. Gilbert,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 87-26941 Filed 11-20-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 18, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0058

Form Number: ATF F 698(5120.25)

Type of Review: Extension

Title: Application by Proprietor of Bonded Winery or Bonded Wind Cellar

Description: ATF F 698(5120.25) is used to establish the qualifications of an applicant for a bonded wine cellar or winery. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations

Estimated Burden: 832 hours

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-26898 Filed 11-20-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

November 18, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0152

Form Number: 3115

Type of Review: Resubmission

Title: Application for Change in Accounting Method

Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Burden: 77,076 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–26899 Filed 11–20–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

November 17, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0203
Form Numbers: 5329
Type of Review: Resubmission
Title: Return for Individual Retirement Arrangement and Qualified Retirement Plans Taxes
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are excess contributions to an IRA, premature distributions from an IRA, and other qualified retirement plans excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.
Respondents: Individuals or households
Estimated Burden: 113,101 hours
Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–26900 Filed 11–20–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for review

November 17, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: New
Form Number: 343
Type of Review: New Collection
Title: Application for Transfer of Federally Seized/Forfeited Property to State or Local Law Enforcement Agency
Description: The information collection is necessary when a state or local law enforcement agency, which participated in a law enforcement action leading to a seizure or forfeiture of a tangible asset, wants to obtain possession of the seized property; or where a participating law enforcement agency petitions for a share of potentially forfeitable property
Respondents: State or local governments
Estimated Burden: 400 hours

OMB Number: 1515–0050
Form Number: 3347 and 3347–A
Type of Review: Extension
Title: Declaration of Owner for Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee when Entry is Made by an Agent
Description: Customs Form 3347 allows an agent to submit, subsequent to making entry, the declaration of the consignee which is required by statute. Also, Customs Form 3347–A permits a nominal consignee to file the declaration of the actual owner and be relieved of statutory liability for the payment of increased duties
Respondents: Businesses or other for-profit
Estimated Burden: 435 hours
Clearance Officer: B. J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of Alcohol, Tobacco and Firearms

QMB Number: 1512–0482
Form Number: 5100/1
Type of Review: Extension
Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act
Description: Under the Federal Alcohol Administration Act, bottlers and importers of alcohol beverages are required to display certain information for consumers on labels and in advertisements. Other optional statements are also required.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 1 hour
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–26901 Filed 11–20–87; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 225
Monday, November 23, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

November 17, 1987.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Tuesday, November 24, 1987, following the Open Meeting, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Mass Media—1—Results of an Investigation into the Conduct of Seraphim Corporation, Licensee of Station KGMC(TV), Oklahoma City, Oklahoma.

This item is closed to the public because it concerns Invasion of Privacy and Investigatory Records Matters See 47 CFR 0.603 (f) and (g)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Mass Media Bureau and members of his staff
Chief, Office of Public Affairs and members of his staff.

Action by Commission November 17, 1987. Commissioners Patrick, Chairman; Quello, Dawson, and Dennis voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, FCC Public Affairs Office, telephone number (202) 632-5050.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26983 Filed 11-19-87; 11:09 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

November 17, 1987.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 24, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: In the Matter of Amendments to Part 90 that would establish a Public Safety National Plan and the Service Rules and Technical Standards for use of the 821–824/866–869 MHz Bands by the Public Safety Service. Summary: In this proceeding the Commission considers a National Plan for Public Safety in response to a Congressional directive. The Commission also considers rules and technical standards for use of the 821–824/866–869 MHz bands by the public safety service.

Private Radio—1—Title: In the Matter of Amendments to Part 90 that would restrict the use of radio transmitters with external frequency controls. Summary: The FCC will consider whether to adopt rules that would deny type acceptance to certain transmitters that permit front panel programming of frequencies by external controls.

Common Carrier—1—Title: In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules. Summary: The FCC will consider the petition filed by MCI Telecommunications Corp. regarding clarification of an earlier Order in this docket regarding entities that share private networks and private lines.

Common Carrier—2—Title: In the Matter of Bell Atlantic Petition for Declaratory Ruling concerning Application of the Commission's Access Charge Rules to Private Telecommunications Systems. Summary: The FCC will consider the petition filed by Bell Atlantic Telephone Company.

Common Carrier—3—Title: In the Matter of Amendment of Part 69 of the Commission's Rules Relating to Private Networks and Private Line Users of the Local Exchange. Summary: The FCC will consider whether to adopt a Notice of Proposed Rulemaking which will reexamine the application of access charges to private networks and private line users of exchange access.

Mass Media—1—Title: Policies regarding detrimental effects of proposed new broadcast stations on existing stations (MM Docket No. 87-68). Summary: The Commission will consider the *Carroll* doctrine and the UHF Impact Policy, which require the Commission, in certain cases, to consider the economic impact a proposed broadcast station will have on an existing station.

Mass Media—2—Title: AM Stereophonic Broadcasting. Summary: The Commission will consider three petitions for rule making and two reports issued by the National Telecommunications and Information Administration concerning AM stereophonic broadcasting.

Mass Media—3—Title: Petitions for Reconsideration and Clarification of Commission's Indecency Enforcement Standards, filed by Action for Children's Television, *et al*, and the National Association of Broadcasters. Summary: The Commission will consider the above-referenced Petitions with respect to its decisions, adopted on April 16, 1987, involving: INFINITY BROADCASTING CORPORATION OF PENNSYLVANIA, licensee of Station WYSP (FM), Philadelphia, Pennsylvania; PACIFICA FOUNDATION, INC., licensee of Station KPFK (FM), Los Angeles, California; and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, licensee of Station KCSB-FM, Santa Barbara, California.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: November 17, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26984 Filed 11-19-87; 11:09 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:30 p.m. on Tuesday, November 17, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider (1) A recommendation regarding an administrative enforcement proceeding against an insured bank; (2) matters relating to the possible failure of insured banks; and (3) a personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant

to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 18, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-27008 Filed 11-19-87; 1:41 pm]

BILLING CODE 6714-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 2:00 p.m.—Wednesday, December 2, 1987.

PLACE: National Credit Union Administration, 1776 G Street, NW., 6th Floor Chairman's Conference Room, Washington, DC 20456.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376-2623.

AGENDA:

I. Officer Compensation

Carol J. McCabe,

Secretary.

[FR Doc. 87-27016 Filed 11-19-87; 3:38 pm]

BILLING CODE 7570-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 23, 1987:

An open meeting will be held on Tuesday, November 24, 1987, at 2:00 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9) (A) and (10) and 17 CFR 200.402(a) (4), (8), (9) (i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, November 24, 1987, at 2:00 p.m., will be:

1. Consideration of whether to adopt amendments to Rule 174 under the Securities Act of 1933. The amendments would reduce the 40 or 90 day period during which dealers must deliver prospectuses in aftermarket securities transactions following public offerings. The Commission also will consider adopting conforming amendments to Items 502(e) of Regulation S-K and Rule 15c2-8 under the Exchange Act of 1934. For further information, please contact Larisa Dobriansky at (202) 272-2589.

2. Consideration of whether to adopt an amendment to Form N-SAR, the semi-annual report for registered investment companies, under the Investment Company Act of 1940 and the Securities Exchange Act of 1934. The amendment would incorporate the change of accountant disclosure requirements of Form 8-K under the Securities Exchange Act by cross-referencing Form N-SAR to Form 8-K. For further information, please contact John McGuire at (202) 272-2107.

The subject matter of the closed meeting scheduled for Tuesday, November 24, 1987, following the 2:00 p.m. open meeting, will be:

Formal orders of investigation.

Institution of injunctive action.

Institution of administrative proceeding of an enforcement nature.

Settlement of injunctive action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272-2091.

Jonathan G. Katz,

Secretary.

November 17, 1987.

[FR Doc. 87-26947 Filed 11-18-87; 4:29 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 225
Monday, November 23, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Sea Arama, Inc. (P84D)

Correction

In notice document 87-25505 appearing on page 42331 in the issue of Wednesday, November 4, 1987, make the following correction:

In the first column, in item 3, after "Pacific False Killer whales (*Pseudorca crassidens*) insert "2".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA No. 84.023]

Invitation of Applications for New Awards Under the Research in Education of the Handicapped Program for Fiscal Year 1988

Correction

In notice document 87-26532 appearing on page 44296 in the issue of Wednesday, November 18, 1987, make the following correction:

In the table, the deadline for transmittal of applications for CFDA No. 84.023M1 should read "Feb. 22, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0398]

International Drug Scheduling; Convention on Psychotropic Substances; Barbiturate Substances, Stimulant Substances, Certain Non-Barbiturate Sedatives

Correction

In notice document 87-25942 beginning on page 43123 in the issue of Monday, November 9, 1987, make the following correction:

On page 43123, in the second column, in the second paragraph, in the 16th line, "interview" should read "review".

BILLING CODE 1505-01-D

federal register

Monday
November 23, 1987

Part II

The President

Office of Management and Budget

Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings Amendments); Final Order and Revised Sequestration Report for Fiscal Year 1988

Federal Register
Vol. 52. No. 225
Monday, November 23, 1987

Presidential Documents

Title 3— The President

Order of November 20, 1987

FINAL ORDER

Emergency Deficit Control Measures for Fiscal Year 1988

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1987 (Public Law 99-177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) (hereafter referred to as "the Act"), I hereby order that the following actions be taken immediately to implement the sequestrations and reductions determined by the Director of the Office of Management and Budget in his report dated November 20, 1987, under section 251 of the Act:

(1) Each automatic spending increase that would, but for the provisions of the Act, take effect during fiscal year 1988 is permanently sequestered or reduced as provided in section 252. The programs with such automatic spending increases subject to reduction in this manner are: National Wool Act; Special milk program; and Vocational rehabilitation.

(2) The following are sequestered as provided in section 252: new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended; and obligation limitations.

(3) For accounts making payments otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the fiscal year by the amount specified in the Director of the Office of Management and Budget's report of November 20, 1987.

(4) For accounts making commitments for guaranteed loans and obligations for direct loans as authorized by substantive law, the head of each Department or agency is directed to reduce the level of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified in the Director of the Office of Management and Budget's report of November 20, 1987.

All reductions and sequestrations shall be made in strict accordance with the specifications of the November 20 report of the Director of the Office of Management and Budget and the requirements of section 252(b).

This Order shall be effective immediately and supersedes the initial Order issued on October 20, 1987.

This Order shall be reported to the Congress and shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,

November 20, 1987.

[FR Doc. 87-27206
Filed 11-20-87; 7:45 pm
Billing code 3195-01-C

November 20, 1987

OFFICE OF MANAGEMENT AND BUDGET

Revised Sequestration Report for Fiscal Year 1988

Agency: Office of Managment and Budget

Action: Report Transmittal

SUMMARY: This notice transmits the revised Sequestration Report for Fiscal Year 1988. In accordance with the provisions of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. Public Law 100-119.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 20, 1987

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In accordance with the requirements of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119, I hereby submit to you my revised Sequester Report for fiscal year 1988. As required by law, this report is being submitted simultaneously to the President and Congress.

Because no deficit reduction has been achieved since my initial sequester report was transmitted on October 20, 1987, a final sequestration order is to be issued today requiring the sequestration of sufficient budgetary resources to achieve the full $23 billion deficit reduction specified by the Act.

The only significant budget legislation enacted since the October 20th report is the interim extension of certain insurance and housing credit programs in the Veterans Administration (VA). This legislation (Public law 100-136), on net, increases outlays exempt from sequestration and the baseline deficit by $1.0 billion.

Budget Baseline Estimates
(in billions of dollars)

	January Baseline	November Baseline	Net Deficit Reduction (-) or Increase (+)
Receipts.....	903.0	903.0	-*
Outlays.....	1,065.2	1,067.0	1.8
Deficit.....	162.2	164.0	1.8

* $50 million or less.

A revised table showing the composition of the November baseline outlay estimates for 1988 is enclosed.

Sequesterable budgetary resources and associated outlays are unchanged from the initial sequester report. As required by the Act, the economic and technical assumptions underlying the November 20 baseline estimates are also unchanged from those that were presented in the initial sequester report. Because there has been no change in sequesterable resources and associated outlays since the October 20th initial Sequester Report for Fiscal Year 1988, I am incorporating by reference the portions of that report concerning sequesterable resources and outlays; specifically, the appendix to the report showing the sequestration reductions by agency and budget account that provide the detail for the final Presidential sequester order (Federal Register, Vol. 52, No. 203, Part VIII, Wednesday, October 31, 1987, pp. 39451-39492). As specified by the Act, in addition to the elimination of automatic spending increases and the application of certain special rules, uniform across-the-board reductions in sequesterable budgetary resources of 10.5 percent for defense programs and 8.5 percent for non-defense programs are required.

With best wishes, I remain,

Sincerely yours,

James C. Miller III
Director

Enclosure

IDENTICAL LETTERS SENT TO HONORABLE GEORGE BUSH, HONORABLE JAMES C. WRIGHT, JR.

Composition of November Baseline Outlay Estimates for Fiscal Year 1988
(dollar amounts in billions)

	Estimate	Percent of Total
Defense Programs a/:		
Subject to across-the-board reduction b/	109.2	10.2
Exempt from sequestration c/	180.1	16.9
Subtotal, defense programs	289.3	27.1
Nondefense Programs:		
Subject to sequestration:		
Certain programs with automatic spending increases d/	1.2	0.1
Certain special rule programs e/	99.1	9.3
Subject to across-the-board reductions f/	110.4	10.4
Subtotal, subject to sequestration	210.7	19.7
Exempt from sequestration:		
Social security	218.2	20.5
Federal retirement, disability, and workers compensation	58.4	5.5
Earned income tax credit	2.9	0.3
Low-income programs g/	70.5	6.6
Veterans compensation and pensions	14.5	1.4
State unemployment benefits	14.9	1.4
Offsetting receipts	-65.3	-6.1
Net interest	145.9	13.7
Other h/	106.9	10.0
Subtotal, exempt from sequestration	567.0	53.1
Subtotal, nondefense programs	777.7	72.9
Total	1,067.0	100.0

a/ Budget function 050, excluding FEMA programs.
b/ Excludes military personnel accounts exempted by Presidential authority.
c/ Largely outlays from military personnel accounts, which were exempted by Presidential authority, and outlays from obligated balances.
d/ National Wool Act, special milk, and vocational rehabilitation programs.
e/ Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.
f/ Excludes 1989 outlays for the Commodity Credit Corporation (CCC).
g/ Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC, and commodity supplemental food program.
h/ Outlays from prior-year budgetary resources, certain prior legal obligations, and other exempt programs.

[FR Doc. 87-27207
Filed 11-20-87; 7:46 pm]
BILLING CODE 3110-01-C

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Monday, November 23, 1987

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

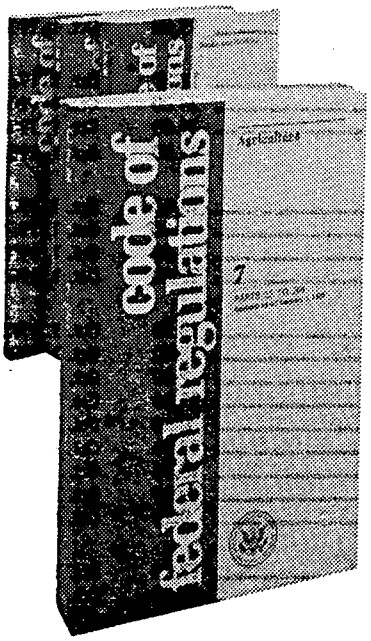
[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.



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